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THE  
PRACTICE  
OF THE  
**Ecclesiastical Courts,**  
WITH  
FORMS AND TABLES OF COSTS.

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BY  
HENRY CHARLES COOTE,  
PROCTOR IN DOCTORS' COMMONS, AND ONE OF THE EXAMINERS TO THE JUDICIAL  
COMMITTEE OF HER MAJESTY'S MOST HONOURABLE PRIVY COUNCIL AND  
THE ARCHES AND PREROGATIVE COURTS OF CANTERBURY.

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## ADVERTISEMENT.

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THE principles which regulate the Judicial Practice of the Ecclesiastical Courts have, in their older form, been illustrated by Clerke, Conset, and Oughton; the latter of whom has also annexed to his work some formular precedents, which have long since, however, become obsolete and impracticable.

With this solitary exception, (if, indeed, it be such,) there is not, as far as I am aware, any publication either of early or recent date, which has been conceived upon the plan of the present Compilation, and it was the consideration of this deficiency which prompted me to make the first step toward supplying it by a Selection of such Modern and Approved Precedents as would embody and elucidate the General Principles of Ecclesiastical Practice.

The peculiarity, therefore, which I claim for the following pages will, I trust, assist to excuse the faults which will be found in them, and suggest to the candid Reader, who is not ignorant of the difficulties which attend the adoption of a new method, an indulgence for any imperfection of information, or crudeness of remark, which the scrutiny of a critic may detect.

In making the assertion, however, that the method which I have pursued forms the peculiarity of these pages, I mean only to express that no complete or general compilation on this subject has yet been submitted to the judgment of the Public.

In the lucid and excellent Sections on *Practice* which have appeared in the new edition of Burn's "Treatise on the Ecclesiastical Law," by Dr. Robert Phillimore, the same plan has been followed; though, owing to the range of the work being too wide to allow the amplification of any single department, they are necessarily on a small and limited scale. If the learned and talented Editor had extended his plan so as to embrace all the phases of practice discernible in the Ecclesiastical Courts, there would have been no necessity for the present Compilation, and I should have unhesitatingly suppressed the materials which I had collected for it.

HENRY C. COOTE.

*Doctors' Commons.*



## INTRODUCTION.

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NOTWITHSTANDING the attention which the Ecclesiastical Jurisdiction has for many ages attracted, from the religious and important nature of the powers which it exercises, very scanty information can be found in print respecting its early or later history in this country. The difficulty, therefore, which the compiler of the present manual experienced in procuring authentic materials for this subject will, he trusts, be his excuse for the following meagre and insufficient notices collected by him during the leisure moments of an active professional career.

Considering that some explanation was due to the reader before he entered on the details of the legal practice of the Ecclesiastical Courts, he had recourse to the original sources of the Archiepiscopal *Registra*, which exist only in manuscript, in order to obtain the required elucidation: and it is chiefly from these records, aided in some instances by the older church historians, that the compiler has derived the groundwork of the following observations, the scope of which is principally

to shew that the subject matter of the Ecclesiastical Jurisdiction has flowed naturally and legally into its present channels, the greater portion of it not existing in this country, as the law of any tribunal, prior to the introduction of the Consistories, and the remainder having undergone, through means of the latter, so beneficial a developement in principles of equity, that a claim even of original merit might almost be made and supported.

The establishment of these courts was in this country of considerably later date than in almost any other state of Europe. On the continent they had been in active operation ever since the reign of the Emperor Theodosius, the younger, to whom must be ascribed their first legalization. But even before that age the separation of the Christian body from the nation at large, which still adhered to paganism in almost all material points, both in practice and opinion, had occasioned many peculiar questions in which their faith might be in some degree compromised or implicated, to be treated upon and determined by their own assembly under the supervision of the higher priesthood, and without the intervention of the ordinary civil tribunals of the state. This, we have every reason to regard as the first germ of the Ecclesiastical Jurisdiction, an authority peculiar to and perhaps co-existent with Christianity itself, and to which it is impossible to find an exemplar or analogy in any pagan state of antiquity.

Whilst in England these courts, as we shall afterwards see, owe their ostensible birth to a sudden and fortuitous introduction of foreign usages and principles of law; on the continent, they had been the gradual

and spontaneous product of opinions deducible from and connected with the dogmas and traditional practices of the Christian religion itself. The Church, as a governing power, possessed, simultaneously with the authority of inflicting a private penance for the more secret offences of a minor grade, a corresponding jurisdiction to impose a public admonition and censure on offenders of a glaring and scandalous character(*a*); and to the exercise of the latter of these powers we owe the criminal processes of the church *pro salute animæ*, or for the reformation of moral excesses. In the same manner, the circumstance of marriage being regarded in the light of a sacrament or sacramental rite, necessarily placed it, together with all circumstances connected therewith, entirely under the control of the Church.

This jurisdiction being, therefore, native and inherent, received at the hands of Theodosius no more than a general confirmation and support. But from the simple text of the *Codex Theodosianus*, by which the bishops are pronounced to be the proper judges in all cases, "*quoties de religione agitur*," the Ecclesiastical Jurisdiction received a liberal amplification in succeeding ages, through the voluntary concessions of the civil government; for the Church subsequently acquired a complete power of adjudication, not only over the conduct of clerks, its own revenues, and marriages, but also over the accessory questions of dower and alimony, the breach of faith in sworn compacts or promises, the

(*a*) *Manifesta precata non sunt occulta correctione purganda*, Decret. Greg. 9, lib. 5, tit. 38, cap. 1. Offences of this kind, according to the canon law, cannot be absolved by a priest; they must be referred to the bishop of the diocese. Cod. Theod. leg. 1, derelig. "*Quoties de religione agitur, episcopos convenit judicare.*"

validity or invalidity of last wills, the enforcement of legacies, and the administration of a deceased person's property.

This was the condition of the continental Ecclesiastical Courts at the epoch of the accession of the Norman conqueror to the throne of England; and they had already excited the jealousy and awakened the late repentance of the secular authorities, with whose jurisdiction they on many occasions clashed and were successfully competed. In the words of a great French antiquary(*b*) describing their state at this time—"Curiae Christianitatis amplissima fuit jurisdictio, cum questionum et causarum omnium quæ non modo res ecclesiæ sed et sacramenta, et quidquid ex eis dubietatis oriretur, spectant, cognitionem sibi arrogasset."

Nothing of this kind was to be seen in England, at the time of the Norman conquest. The Anglo-Saxon common law never recognised the principle of a separate civil or criminal jurisdiction, as exercised by the Church, though, either out of respect to the sacred character of its members or from a sense of their superior learning and intelligence, it had certainly admitted the Episcopal order to a participation in the municipal judicature of the country. For ever since the introduction of Christianity into England, the bishops had sat to hear causes in the county court, in conjunction with the ealdorman or his sheriff.

It will be a mistake, however, to suppose that the secular authorities, even in those times, interfered (at least legally) in the administration of justice by the bishop in matters which regarded the assignment of

(*b*) Ducange, sub voc. Curiae Christianitatis.

penance for a public immorality or indecorum, or in the cognizance and punishment of the excesses of the clerks of his diocese. These questions, though discussed and tried in the presence of the hundred, were reserved for the judgment and decision of the bishop alone. But this hybrid union of courts, besides its great practical inconvenience, was for other reasons unlikely to find favour in the eyes of the foreign churchmen, who had succeeded to the Episcopal sees of England on the expulsion of the native prelates; they had been educated under a totally different system; many of them had previously acquired fame for their proficiency in the peculiar law of the Church; and during the old constitution of things in England, there was but small scope for a display of the powers and ambition of a cultivated intellect and learning. The Saxon municipal courts, as it would appear, never possessed a bar of professional advocates, and their gothic manner of trial could not fail to wear a barbarous aspect to men whose minds were fraught with a prepossession in favour of the more refined jurisprudence of the code, or the Ecclesiastical canons. But a stronger and less worldly motive may have influenced the Norman conqueror and his clergy to effect the revolution to which I am now alluding; for it is not improbable that religious scruples might have occasioned a reluctance on their part to countenance a scheme which continually exposed them to the risk of violating the canons by personally interfering in secular causes, or compelled them to endure the scandal of seeing, on many occasions, matters of religious censure, if not directly submitted to the decision yet at least subject to the interposition of a lay judge. For as the bishop and the ealdorman presided over

an united court, the separation of causes could not constantly be so strict but that the one should at times intermeddle in the peculiar province of the other. And finally another reason also existed for the change: the scyrgemot or county court, soon after the accession of William the First, was considerably abridged of its legitimate powers, and from its former high rank as a tribunal of the first instance, was converted into a merely secondary court of justice by the institution of the Norman *aula regis*, which began to absorb the general legal business of the kingdom; and accordingly the attendance at the degraded county court, however it might have satisfied the unassuming temperament of the English bishops of that period, could scarcely square with the more elevated pretensions of the foreign intruders.

The persuasions of the clergy, therefore, backed probably by the authority of the pope, may have been the inducing reason to William the First to separate the unnatural conjunction which had hitherto existed between the Municipal and Ecclesiastical Jurisdictions, and to ordain that, for the future, no bishop or archdeacon should hold pleas founded on the canon law, (*de legibus episcopalibus*,) in the hundred or county court, or lay before secular men any question which concerned the government or cure of souls.

These enactments were contained in a statute of the Norman parliament, (for such it is, though commonly styled a charter of that monarch,) the date of which is not expressed, and cannot be now supplied from any extrinsic source.

This act, though brief in its expressions, is pregnant with the clearest directions respecting the constitution and regimen of the new intended court.



It not only defines the nature of the suits to be tried there, at the same time providing a code of laws for the guidance of those who should be appointed to administer justice in relation thereto, but it also prescribes for these courts a fixed and settled locality; and finally, without derogating from the rights of regal prerogative by setting up an *imperium in imperio*, a consequence to be fairly apprehended in that era of clerical pretension, if this new creation had been endowed with the power of effectually enforcing its decrees by a direct course through its own ministers and satellites, by a consummate stroke of policy, it subjects the infant jurisdiction to a complete dependence on the municipal authority, by taking the immediate execution of all its sentences out of the hands of ecclesiastics and referring it entirely to the secular arm of the justiciaries of the crown.

This is plainly shewn by examining the details of the instrument(c).

It commences by reciting that until William's time the episcopal laws had not been well administered or according to the precepts of the holy canons, and he therefore adjudged, by the advice of the common council and council of his archbishops, bishops, and abbots,

(c) Ancient Laws and Institutes of England, by Thorpe, 1840, p. 213. From a transcript in the *Liber Pilosus* of the Dean and Chapter of St. Paul's, London, and in the Register of Lincoln, Remig. fol. 9. Co. Instit. 5, par cap. 53, fo. 260. Godol. Rep. Ca. cap. 10. "Willielmus gratia Dei rex Anglorum, comitibus vice comitibus et omnibus Franciginis et quibus in episcopates Remigii terras habentibus

salutem. Sciatis vos omnes et cæteri mei fideles qui in Anglia manent quod episcopales leges quæ non bene, nec secundum sanctorum canonum precepta usque ad mea tempora in regno Anglorum fuerunt, communi concilio et concilio archiepiscoporum, meorum et cæterorum episcoporum et abbatum, et omnium principum regni mei emendandas judicavi."

adopted the practice of the Roman Consistory, and to which they have closely adhered up to the present day, the modern formulæ varying little if at all from its original standard.

In causes of the first instance, the citation, the libel, the *litis contestatio*, the answers, the compulsories, or *literæ compulsoriales*, to enforce the attendance of witnesses, were and still are identical in form with the instruments in use at Rome. There was also the same examination of witnesses in secret, and the consequent decree of publication passed by the judge before their depositions or evidence could be unsealed and read. In appellate causes the same inhibition issued to the judge, a *quo*, or inferior ordinary, and to the party respondent, enjoining them to forbear innovating or attempting anything to the prejudice of the appellant's right of appeal, &c. &c. In a word, the formal instrument and pleadings are still conceived in the terms prescribed by the ancient practice of the courts of Rome(e).

But a few remarks on the general process and formulæ of the Ecclesiastical Courts may not be out of place here.

The offender was summoned into judgment, by writ of citation under the seal of the ordinary, and on his appearance, the libel or articles containing the accusation or charges were brought in and proffered to him. If the latter were unexceptionable in point of law or relevancy, they were admitted to proof, and the judge then

(e) Of this any person may easily convince himself; and for that purpose I refer him to the "Formularium variarum commissionum, articulorum exceptionum, interrogatoriorum, et petitionum sententiarum et appellationum, &c. Rome, 1602.

called upon the accused to give a general answer or issue in the affirmative or negative to the charge of the accuser.

This was an imitation of the *litis contestatio* of the civil law, and was simply an averment in the negative or affirmative of the truth or falsehood of the charge. If a denial were given, and the suit contested negatively, a sworn personal answer was then exacted from the defendant, though the plea might contain criminal imputations, and he should consequently, by a full and sincere response, if guilty, confirm the accusation of his enemy(*f*). If the negative issue were followed up by an unqualified and consistent denial in the personal answer of the defendant or party cited, (as he is termed in the technical language of the Ecclesiastical Courts,) the plaintiff or promoter would then be obliged to produce witnesses in support of his case, who were accordingly sworn in open court, in the presence of the adverse party, the oath of testimony being administered to them by the judge. The latter afterwards himself strictly examined the witnesses in a secret chamber, (*foribus clausis*,) assisted by his registrar or actuary, who faithfully recorded in writing their several depositions. The same process was adopted in regard(*g*) to the sworn answers of the defendant.

The defendant, of course, had the liberty of counter-pleading, and the same ground was then gone over by him. When each party considered his case to be suf-

(*f*) This was prohibited by 13 Car. 2, c. 12, s. 4. And the historians occasionally call it the oath *ex officio*, as if the *jurismentum calumnie* or *malitiæ*,

or any other oath known to the canon or civil law, were not equally an oath *ex officio*.

(*g*) Oughton, *Ordo Judicio, et Causis*, tit. 4, s. 8, and in *Nota*.

ficiently made out to enable him to bring it before the court, the original cause was concluded or wound up, and the judge decreed publication to pass on the *sayings* or depositions of the witnesses. Informations were next taken, *i. e.* the evidence was read, and its credibility and sufficiency debated upon, in open court, by the advocates of each party, the judge finally determining the question by a definitive sentence in writing, or by a verbal interlocutory decree. This is but a slight sketch of the strictly ancient practice; but I have said enough to shew that the same scheme is still pursued, except in a few instances, where the express provisions of the legislature have innovated on its principles, or an idea of convenience has effected some inconsiderable alteration.

The scheme of practice adopted by the Ecclesiastical Courts consists of a series of interlocutory orders, technically called assignations, which are the product and successive steps of the cause. These are the same in their character, and also bear the same appellations in the English courts, as they now or formerly did at the supreme Court of Rome.

The constitution of the Ecclesiastical Courts was in all respects superior to that of the municipal tribunals. Deriving the forms of their judicial proceedings from the refined and ancient source I have before intimated, they at the same time adopted the custom of the regularly admitted and stationary bar of advocates, and as a further assistance to the illiterate or inexperienced client, a certain number of authorized attornies of the court, denominated *procuratores* or proctors, were ordained, who might guide him through the difficulties and niceties of his suit, and legally represent him in the

presence of the court. The latter privilege was long unknown to the suitor at common law (*h*).

There is little doubt that the establishment of the Ecclesiastical Courts gave a higher tone and character to the general judicature of the country. Their grave and erudite system of practice, and their precise and accurate method of taking evidence, formed a striking contrast to the rude and summary proceedings of a trial *per pais* at that period. The preponderance of relative merit must obviously have been in favour of the tribunals of the Church. The foreign jurists who presided over the infant Consistories and their English successors were all men of the highest learning in their department, and their efforts, of which one result is the Court of Chancery, produced in the sequel the most beneficial consequences for the English laws and constitution, by imparting to the theory of both more refined and extended principles.

But the weak point of Ecclesiastical Jurisdiction has always consisted in its inability to enforce its own decrees.

This was originally owing to a reluctant delicacy of feeling on the part of the Church itself, but it has been maintained up to the present time, by the unnecessary jealousy of the legislature and the lay judges of the Crown.

The concluding sections of the statute which refer to this subject are devoted to applying a remedy for the contumacy of offenders. They are as follow:—"If

(*h*) The constitutions of Otho contain many curious regulations respecting the appointment of proctors, tit. 24, de officio procuratorum. See also a Constitution of Peccham in Lynda, lib. 1, tit. 18, 1281.

any person elated by pride will not come to the bishop's justice (ad justitiam episcopalem), let him be called once, twice, and thrice, and if he will not then come to make compensation (ad emendationem), let him be excommunicated; and if need shall be, let the power and justice of the king or his sheriff be employed in vindicating this"(i).

Excommunication was the only weapon which the Church possessed, and we may easily conceive that to a hardened offender it could have had few terrors, as the penal result lay in so remote a perspective. This species of spiritual outlawry had consequently been found on many occasions to fail in its desired effect, when the pecuniary claims of the Church were to be enforced, or her correctional orders obeyed, and she had felt herself, though with reluctance, compelled to resort to the fortifying arm of the secular law. This *invocatio brachii secularis*, as the canonists quaintly termed it, was the only resource that lay in her power. For the acceptance of an authority of equal strength and sternness with the ordinary secular jurisdiction, though it were the voluntary and unsolicited offer of the princes who were able to confer it, would in her apprehension have exposed her to the imputation of having abandoned the sacred precepts of her Divine Founder, whose kingdom had been by him declared to be not of this world. This feebleness of the Ecclesiastical Jurisdiction was therefore of its own choosing.

(i) Si vero aliquis per superbiam elatus ad justitiam episcopalem venire non voluerit, vocetur semel, et secundo et tertio; quod si nec sic ad emendationem ve-

nerit, excommunicetur: et si opus fuerit ad hoc vindicandum, fortitudo et justitia regis vel vice comitis adhibeatur.



The epoch of the first application of this nature is uncertain, but it was undoubtedly early; and the temporal power appears to have been, in all ages subsequent to the establishment of Christianity, attentive to the wants of the Church in this respect, and ready to afford aid of this limited kind on all occasions of her invocation.

But even when custom had familiarized it in the minds of men, and the highest authorities of the Church had sanctioned it by their express approval and practice, there were many ecclesiastics to whose rigid consciences this resort to the secular arm was a source of doubt and anxiety, as an inferential breach of the canon whenever blood followed its active and strenuous interference. We have an instance where a pope condescended to remove scruples of this kind which had arisen in the mind of a well-disposed but timid churchman.

Clement the Third, in a decretal epistle addressed to a bishop whose name and diocese are suppressed by the compiler, in order to silence the doubts which the other appears to have entertained and expressed on the subject, urges, that "if the king (to whom the sword of justice is committed to uphold the good as well as to punish the bad,) has directed upon the rebels of ecclesiastical authority the power so entrusted to him, on the complaint of the Church, the consequence of such contumacy must alone be imputed to their stubbornness or guilt"(k).

(k) Decret. Greg. 9, lib. 5, tit. 12, c. 21. "Si te hujusmodi querimoniam simpliciter deponente rex (cui ad bonorum laudem, vindictam vero malorum

gladius est commissus) in eosdem rebelles traditam sibi exercuerit potestatem eorum erit duriæ, aut malitiæ imputandum.

The Conqueror provided for the English Ecclesiastical Courts the same relief and support which were allowed to them on the Continent. The next section of the act contains a remarkable enactment (*l*). "He who on being called has refused to come to the justice of the bishop (*ad justitiam episcopi*), for each calling shall amend the episcopal law. This alludes probably to the wite of the Anglo-Saxon æra, for *oferse wennisse*, which the defendant incurred by contumaciously absenting himself from the presence of the judge by whose summons he was convened.

The next section is as follows (*m*): "This also I forbid, and by my authority prohibit, that any sheriff, bailiff, or minister of the king, nor any layman, intermeddle in the laws which belong to the bishop, nor any layman bring another man without justice to trial before the bishop."

These enactments are only intended as a piece of advice to each court to mind its own jurisdiction, without intrenching on the province of the other, and from them was deduced the practice of prohibitions. Another section concludes this ordinance (*n*). "Judgments shall be given" (perhaps it may be rendered trial shall be held) "in no place but the episcopal seat,

(*l*) Ille autem qui vocatus ad justitiam episcopi venire noluit, pro una quoque vocatione legem episcopalem emendabit.

(*m*) Hoc etiam defendo et mea autoritate interdico ne ullus vicecomes aut prepositus aut minister regis, nec aliquis laicus homo de legibus quæ ad episcopum pertinent se intromittat; nec aliquis laicus homo alium hominem sine

justitia episcopi ad judicium adducat.

(*n*) Judicium vero in nullo loco portetur nisi in episcopali sede aut in illo loco quem ad hoc Episcopus constituerit." The expression "portare judicium" occurs in Domesday, Lincoln, 336. "Sed his jurantibus contradicit vluiet et offert se portaturum judicium quod non ita est sicuti dicunt."

or in that place which the bishop shall have appointed for the purpose."

This last sentence is hardly more than a repetition of the foregoing provisions.

Though this ordinance effected a considerable change in the legal constitution of the country, and seemingly deprived the municipal judicature of a portion of its former occupation and employment, yet it must have been in no degree a source of regret to the Norman lawyers who now presided over the English Courts, as they could hardly feel any disinclination to relinquish the cognizance of matters with the study of which they were totally unfamiliar, as such subjects had formed no branch of their previous legal discipline or training.

The same extent of jurisdiction which existed on the Continent appears to have been transplanted without curtailment into this country. Independently of the entire control over the peculiar affairs of the Church and of all ecclesiastical structures, the ordinary was the judge who signified to the king's justices the fact of a marriage and the legitimacy of a birth. He pronounced a sentence of divorce between married parties, and determined the validity of a will, or decreed payment of a legacy.

These and other points occur in the early common law records as admitted portions of the jurisdiction of the Church.

In addition to this, the Church afterwards acquired the management of tithe suits, and a complete power over the personal estates of all persons dying intestate.

But a clearer view may be obtained by examining this jurisdiction more in detail. Its two grand departments, comprising various subdivisions, were causes of

office, or correction, and of instance ; the former being necessarily in the criminal and the latter in the civil form. Besides these, however, there were also certain other causes which partook of the character of both, or, in the language of ecclesiastical law, were *causæ criminales civiliter intentatæ*.

I will begin with the Criminal Jurisdiction, to which both clerks and laity were equally subject. These causes were instituted in three modes, viz. by inquisition, accusation, or denunciation. The first is a proceeding *ex mero officio*, where the bishop or ordinary, having discovered a flagrant offender within his diocese, of his own mere motion, cites him into this Court, to answer for the crime. The second is the every-day process of modern times, the voluntary promotion of the judge's office by any individual residing within the diocese, and answers to the indictment at common law ; and the last is the presentment of an offender at the ecclesiastical visitation, which, though repealed by a late statute in the case of a clergyman (*o*), is still in some degree in use in regard to the laity. The subject-matter of the criminal jurisdiction is comprised in any sin or offence against the general morality and public decency of the nation, but which is not at the same time of so heinous a character as to unhinge the foundation of human society, like murder, theft, or homicide, &c. (*p*). In laics the Church took cognizance of and punished incontinence, adultery, perjury, defamation, usury, violent laying of hands on clerks, brawling in a church or churchyard, drunkenness, blasphemy, absence from

(*o*) 3 & 4 Vict. c. 86.

(*p*) Lynd. note at the words *mortali peccato* in the *Circumspecte agatis*, lib. 2, tit. 2.

church on Sundays or holidays, heresy, &c. (*q*). In clerks a similar jurisdiction obtained, with more competent powers of punishment, for the ordinary could admonish, suspend, depose, or deprive, as the offence might deserve, in his opinion, and according to his interpretation of the law (*r*). The censures to which laymen were subject were, with the solitary exception of heresy, admonition or corporal penance only. By the strict canon law, the judge was forbidden to impose a pecuniary fine for a spiritual offence, or commute a sin for the payment of a sum of money. Something of this kind would appear to have been done in the Saxon times, and it certainly prevailed in this country for a long period after the establishment of the Ecclesiastical Courts, and the permanent introduction of the laws of Rome. The Church, however, at all times, properly and consistently disapproved of the practice, though, under certain regulations, recognized and declared legal by the common law. Pope Alexander the Third prohibited such a practice in a rescript to the Archbishop of Canterbury, on the latter having informed him that the Archdeacons of the diocese of Coventry, within his province, were wont to exact *pœnam pecuniariam* from clerks and laymen for their crimes and excesses, and he directed him to compel the observance of his injunction by the censures of the Church (*s*).

The *Circumspecte agatis* of Edward the First approves of the custom of inflicting a pecuniary punishment, but makes this distinction, that a plea of the nature before referred to shall be allowed in the Court

(*q*) Oughton de Causis, tit. 4.

(*s*) Decret. Greg. 9, lib. 5, tit.

(*r*) Ayliffe, Parergon. Lon. 1734, p. 237.

Christian only. "*Dummodo ad correctionem peccati agetur et non petatur pecunia.*" The meaning of this is that the action shall be instituted against the offender for penance on the suggestion of an alleged breach of good morals, and not for the recovery of damages for a loss sustained, as in the case of defamation, owing to the conduct of the defendant.

This famous statute, with a sense of even-handed justice which would find warm admirers in a slave state of modern times, recommends that penance shall be commuted in all cases, "*si convictus fuerit hujusmodi liber homo.*" The remarks of the learned commentator Lyndewoode evince a rational disgust at the subject of this gloss. Commutation of penance was also approved of by the *articuli cleri*, 9 Edw. 2, cap. 4.

There were, moreover, causes of office instituted against the parishioners, or churchwardens of a parish, for neglecting to repair a church and supply it with the requisites for divine service, or for not walling in or fencing their churchyard, &c. (*t*).

Trials for heresy, or rather, as they were always termed, for heretical depravity (*causæ hereticæ pravitatis*), were never instituted in the court of the bishop, before 2 Hen. 4, c. 15. Before that statute was passed, it was required that the convention should take place at a general convocation of the whole province. In regard to this proceeding an error prevails that the mere expression of an heretical or schismatic opinion, or any acts bearing that necessary construction, made the offender liable to the extreme censure of the law; but this was not the case, for if the party confessed the

(*t*) *Parergon Juris Can.* Lond. 1734, p. 238.



crime objected to him, and signed and read his recantation, he was dismissed as a matter of course. It was only in the case of the firm or obstinate heretic, who *contumaciously* adhered to his former sentiments, and consequently refused to recant, that the ecclesiastical judge was compelled to certify the sheriff, in whose hands the execution of the law remained. The sentence of the court merely found the individual guilty of the crime, and delivered him over to the secular arm. It prescribed no form or modification of punishment, and the guilt or responsibility would rest with the lay officers of the crown, who, however, only obeyed the directions of the *common* law in burning the convicted person (*u*).

The next and most important department consists of civil causes, and these may be classed as pecuniary, matrimonial, and testamentary. The first subdivision comprises suits for church-rates, tithes, and for the subtraction of any fee or property belonging to the Church for which no action would lie at common law.

The matrimonial suits are subdivided in the following manner, according to the difference of the remedy sought by the applicant. Divorce or separation *a mensa et thoro*, on the ground of cruelty or adultery on the part of either the husband or the wife, the restitution of conjugal rights where the one of them has causelessly abandoned the other, and lastly questions regarding the nullity of the contract by reason of an impeditive physical or civil cause.

The testamentary jurisdiction of the Church may be classed under two heads, the entertainment of suits in

(*u*) God. Repert. Canonikum, 40, p. 562, ed. 1678, Lond.

respect of the validity of last wills, viz. what is denominated *probatio sollemnis per testes*, and for the recovery of legacies of personal estate; and, secondly, the power of granting probate of a will in common form to an executor, and letters of administration of the goods of an intestate to the next of kin.

With regard to the first-mentioned division of the Testamentary jurisdiction, some doubt may be entertained, whether it was actually introduced at the epoch of the Conqueror's statute or assumed by the English Church at a subsequent period, as we shall see the other division certainly was. At all events, no opposition appears ever to have been made to the practice, when once the church had begun to assert it, on the part of the common lawyers. The celebrated advocate in Doctors' Commons, who edited the reports of Sir George Lee(y), formerly judge of the Prerogative Court, in his preface to that work, would appear to attribute an early origin in this country to that particular branch of the Ecclesiastical Jurisdiction. He says—"When the freedom of testamentary disposition, our inheritance from our Saxon ancestors, was overwhelmed by the feudal system, and had no *persona standi* in the courts of common law, it took refuge in the Ecclesiastical Courts."

Glanville, who wrote his "*Tractatus de Legibus et Consuetudinibus regni Angliæ*," during the reign of Henry the Second, shows this testamentary jurisdiction to have been vested in the Church as early as his own time, and he treats the Court Christian as its exclusive and legal forum. He says—"Si quis autem aliquid dixerit con-

(y) Sir George Lee's Repts. vol. 1.

tra testamentum, scilicet, quod non fuerit rationabiliter factum, vel quod res petita non fuerit ita ut dicitur legata, tunc quidem placitum illud in Curia Christianitatis audiri debet et terminari, quia placitum de testamento coram iudice ecclesiastico fieri debet, et per illorum qui testamento interfuerunt testimonium secundum juris ordinem terminari" (z).

This passage is repeated verbatim by the author of *Fleta* (lib 2, c. 57,) in whose time the Ecclesiastical Jurisdiction was as extensive as it is now.

The jurisdiction spoken of by Glanville as belonging to the Ecclesiastical judge is the solemn proof of wills *per testes*, and must be carefully distinguished from the ordinary probate in *common form*, which, besides the process of proof *juramento executoris*, and such additional *ex parte* evidence as may appear necessary before the *decretum super valore*, or final approval, is made, includes and comprehends the power of granting administration of a deceased's property, "disposed of by or in any way regarding the will." The last-mentioned power was acquired by the clergy at the same time as the control over intestacies, and is in effect identical with it. But this was not vested in them, as we shall see, until some considerable time afterwards; for in Glanville's age we still find that the estate of an intestate was subject to the general municipal law of the realm. And though he nowhere speaks of the incidents of a total intestacy (*nullo condito testamento*,) he lays it down as an absolute rule that, in all cases of partial or quasi intestacy, viz. such as occurs where no executors have been ap-

(s) *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, edit. 1604, lib. 7, c. 8.

(a) *Ibid.*

pointed by the testator, the next of kin have a right to interfere with the disposal and management of the estate, without any mention of the ordinary, “*Si vero testator nullos (executores) ad hoc nominaverit, possunt propinqui et consanguinei ipsius defuncti ad id faciendum se ingerere*” (b).

In Saxon times the law of intestacies was in the hands of the secular judges, and the few traces of it which are preserved evince that the personal effects of an intestate, which remained after the payment of his debts and other legal charges, were distributed amongst his wife and children, or other nearest of kin, by the order of his lord, in the *soc* or manorial court, to which he owed suit whilst living, or if he were a thegn or other tenant in capiti, by the direction of the County Court.

This is explained by a passage in Cnut's laws, viz. “*And gif hwa cwydeleas of thysum life gewite, sy hit thurh his gymeleaste, sy hit thurh færligne death, thonne ne teo se hlaford na mare on his æhta, butan his rihte heregeata: ac beo be his dihte, seo æhtgescyft swithe rihte, wife and cildum and nehmagum, ælcum be thære mæthe the him to gebyrige.*” i. e. If any one depart this life intestate, whether by reason of his negligence or through sudden death, then the lord shall not take more of his estate than his right heriot, but the division of the inheritance shall be made under his direction (or ordering) between the wife and children and near relations, each one according to the degree of kindred which belongs to him” (c). This extract, it will be observed, alludes only to the jurisdiction of the manorial court; but we may

(b) *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, Edit. 1604, lib. 7, c. 7. (c) Wilkins' *Leg. Angl. Sax.* p. 144.

judge from analogy, that where the parties in question were thegens, or freeholding ecorls, any dispute arising on the subject of their distributive shares would be referred to the court to which alone their suit and service were due: viz. the county or hundred court of the Ealdorman, or his deputy the sheriff.

But it should also be remarked, that in the passage just quoted, there is no hint of any existence of the principle upon which the system of law established after the conquest was founded. The next of kin appear to have had a vested and absolute right, by mere succession as the *heredes legitimi* of the intestate, to retain or dispose of the deceased's property by their own private authority, though subject to the lord's interference in case of litigated claims. The system, so far as regards the theoretical principle, was completely remodelled in the succeeding age, when the law was placed upon its present footing; no person *qua* nearest of kin having an inherent right to interfere with a deceased's property, but doing so only by virtue of a delegation from the ordinary, in whom the custody of the effects is vested immediately upon the death of the intestate.

This portion of Saxon jurisprudence received no alteration at the hands of the Conqueror: it was confirmed to the English by chap. 36 of his laws, in the words following, viz. "Si home mort sans devise, si departent les enfans l'eritè entre sei uwel (egal)." i.e. "If a man dies intestate, let his children divide the inheritance equally amongst themselves" (*d*).

The ancient jurisdiction as well as the law survived in

(*d*) Codex Spelmanni, Ric. Anglicanæ. Scriptor X, Matt. Prior Hagust, de gestis regis Stephani, pp. 311, in Twisden Hist. Paris. pp. 46, 47, Watt's Edition.

full vigour throughout the reign of the second William. This appears from the charter granted by his successor, Henry the First, at the commencement of his reign. In this curious record, after guaranteeing a perfect freedom of testamentary bequest to his barons and other tenants *in capite*, Henry adds, “quod si ipse preventus vel armis, vel infirmitate, pecuniam suam non dederit vel dare disposuerit, uxor sua sive liberi, aut parentes, et legitimi homines ejus eam pro animâ ejus dividant sicut melius eis visum fuerit.” i. e. “But if, being hindered by war or sickness, he shall not have given or arranged to give his property, his wife or children, or else his relations and lawful men, shall divide the same, for the good of his soul as to them shall seem best” (e).

The *legitimi homines*, or lawful men, mentioned here, are the suitors of the hundred or the manorial court to which the intestate belonged, according as king or baron was his immediate feudal superior.

On the accession of Stephen, the jurisdiction over the estates of ecclesiastical persons dying intestate, was at length carved out of the general law; and it is important to consider that this prerogative became vested in the Church, not only as a concession to its struggles for an exclusive jurisdiction over the members of its own corporation, but even for more absolute and stringent reasons (f). A custom had obtained both here and on the continent, for the barons and lords of manors to seize the entire effects of every clergyman, who died intestate within their jurisdictions, and had pre-

(e) Ducange. sub voce Parens. This is the constant mediæval sense of the word, like the modern French “parent.”

(f) Histoire Ecclesiastique de la Province de Normandie, and the Constitutions in Lyndewode, passim.

vailed for so long a time that it had even obtained the semblance or perhaps the reality of law. On some occasions they did not take the trouble to ascertain whether the clerk might not have left a will, or if he had, to discriminate between the circumstances of the two cases.

This enormity was at length prohibited in England(*g*). In the first parliament holden by Stephen, in order to conciliate the minds of the English nation and church, he granted a charter of liberties (*charta de libertatibus*), which confirmed or gave a variety of important political and social privileges. The one which in the sequel involved the greatest consequences was contained in the clause following, to the purport of which we before referred. viz. “Ecclesiasticarum personarum et omnium clericorum et rerum eorum justitiam et potestatem et distributionem bonorum ecclesiasticorum in manu episcoporum esse perhibeo et confirmo. Si vero (i. e. episcopus, abbas, vel alia ecclesiastica persona,) morte præoccupatus fuerit, pro salute animæ ejus ecclesiæ consilio eadem fiat distributio”(*h*). i. e. “The jurisdiction and power over ecclesiastic persons, and all clerks, and their property, and the distribution of ecclesiastical goods, I declare and confirm to be in the hands of the Bishop. But if any one (i. e. bishop, abbot, or other ecclesiastical person) shall be prevented by death (i. e.

(*g*) The Kings of England would sometimes allow the will of an Ecclesiastic to be fulfilled. In 1199, John sent a writ to his justices and sheriffs, directing that the will of Hubert, the Archbishop of Canterbury, should not be infringed. Spelman, Codex. In the Cotton Library, Galba IV., occurs a *carta licencie* from Henry

the Second, to the Archbishop of Canterbury, *libere facere testamentum*. Even so late as the *Gravamina*, (vide infra,) they persisted in not permitting bishops' executors to administer. Matt. Paris. Additamenta, 22, 1120.

(*h*) Ricard. Prior Hagustald, c. 314.

from making his will), let the same distribution be made for his soul's health, by the advice of the Church."

Stephen distinguished the bishops and abbots by name, as he himself by this charter released his own claim to their estates in case of intestacy, at the same time that he prohibited the continuance of the abuse on the part of his subjects against ecclesiastics of the inferior orders.

This charter did not affect the laity, with regard to whom no alteration was made in the law.

We are now approaching the time when this privilege was extended into a general power over lay intestates' estates. It would not perhaps be very far from the truth to assume this revolution to have been greatly indebted for its success to the active co-operation of the people, a supposition which will not be considered strange by those readers who have paid attention to the events of the reign of Henry the Second, and particularly to the memorable struggle of Archbishop Becket, in which the latter appears not only as the advocate of the exclusive rights of the Church, but as the friend, also, and defender of the democratic or English portion of the community against the lawless despotism of its Norman masters.

But the origin of this jurisdiction as an ecclesiastical right is in England so closely connected with the rise and progress of the Roman civil law, that we may almost be justified in regarding the mere introduction of the latter as its indirect cause, although other circumstances may have concurred in favouring the pretensions and assisting the endeavours of the church towards the attainment of that end. One of the most



powerful of these concurrent circumstances was the archiepiscopal mandate, which inhibited clerical persons from interfering in secular affairs, or accepting the office of judge or advocate in temporal causes (i). The active minds of the English unbeneficed clergy being thus forcibly removed from the study of their own municipal laws and customs, in which their energy had been conspicuous at an early period, sought refuge in the rich treasures of the imperial jurisprudence, the principles of which were not only more congenial with their previous habits of thinking, acquired in the study of the canon law, but at the same time afforded greater scope for their powers of application and industry. It will not, therefore, be out of place to trace its establishment in this kingdom, concerning which a multitude of curious facts have been collected by the learned Selden, in the dissertation printed at the end of his edition of *Fleta* (i). Upon his authority I have chiefly relied for the following observations.

The first traces of its revival are mentioned by John of Salisbury, who relates that the *Justinianeum Corpus*, and the other collections of law, were brought into England some time in the course of Stephen's reign: viz., between the years 1136 and 1154, at the same period that the Emperor Llothaire instituted a lecture for their explanation at the University of Bologna. He records the violent opposition which the civil law then met with, and which indeed it seems to have been fated ever to meet with in England, although the largest portion of our statutory enactments and judicial *dicta* have been drawn from its principles (k). But the words

(i) Spelman, Cod. The synod at Westminster, 3 Hen. I.

(k) Polycratic. lib. 8, c. 22.

of our author are curious enough to be quoted at large. "Alios vidi qui libros legis deputant igni nec scindere verentur si in manus eorum jura perveniant aut canones. Tempore regis Stephani a regno jussæ sunt leges quasin Britanniam domus venerabilis patris Theobaldi Britanniarum primatis inciverat. Nequis etiam libros retineret edicto regis prohibitum est, et Vacario nostro indictum silentium; sed Deo faciente eo magis virtus legis invaluit quo eam amplius nitebatur impietas infirmare" (*l*). A portion of our quotation completely refutes the common assertion that the usurping Count of Blois warmly advocated, or timidly succumbed to, the ambitious pretensions of the clergy. By prohibiting the teaching and practice of the imperial jurisprudence, he effectually damped any attempts on their part to found a new jurisdiction respecting intestacies, by consolidating this branch of law with their recognised authority in testamentary disputes and subtractions of legacies (*m*).

The ill-judged edict of Stephen appears to have been relaxed on the accession of Henry the Second. This may be even gathered from the words of John of Salisbury, already quoted, but we may also doubt whether so absurd a proceeding could at any time have been actually carried into effect.

(*l*) *Dissertatio ad Fletam*, c. 7, s. 3, p. 508, edit. 1685, Lond. This edict or regal proclamation of Stephen is referred to by Roger Bacon in his *Opus Minus*.

(*m*) This lecturer was Magister Vacarius or Vicarius, a Lombard. The date of his arrival in this country, and consequently of Stephen's order, is fixed by the chronicle of Normandy under the year 1149. He is the "anti-

quus et immortalis memoriæ Doctor Rogerus," of the succeeding glossators on the civil law. At the same time also flourished on the Continent a cloud of learned men: viz., Irverius, Martinus, Jacobus, &c., whose unremitting labours, assisted to throw a steady and increasing light upon the purpose and meaning of the ancient Roman law. *Dissert.* c. 8, s. 2.

The first result of this new study appeared in the clergy taking up the neglected subject of last wills, of which instruments they established depositories, and became the sole judges in all controversies respecting the execution or contents. It is well known that in succeeding ages the nation has owed a deep debt of gratitude to the clergy for their maintenance and defence of the freedom of testamentary disposition, which then was, and for a long time subsequent continued to be, an utter exile from the Royal Court (n).

The privilege was still imperfect, for it only embraced the legatary estate, or *portio defuncti*, and not the remaining part, which the testator was unable to alienate if he died leaving a wife or children surviving him. The consequent necessity, therefore, of ascertaining the whole amount of the deceased's property before any bequest could be safely discharged, would to so great a degree incommode the Court, if it rigidly kept itself within the prescribed limits, that it would soon be tempted to overstep those restrictions, and at the request of the suitors interfere with the distribution of the *legitimate* or *reasonable* parts of the indispositive estate. From the convenience of the Ecclesiastical Court being local, and in general near at hand, the beforementioned usurpation, if it may be so called, would be overlooked, if not openly encouraged, by the people at large, and there would be little difficulty in superinducing upon this circumscribed authority a more complete and extensive jurisdiction.

(n) The example, however foolish it might be, was imitated by Henry III., who commanded all the schools of the civil and canon laws which existed in London to be permanently closed. Dissert. c. 8, s. 2.

This partial distribution we may therefore conjecture was not slow in growing, under the fostering hands of the church ; and, in spite of old and positive law to the contrary, it was enlarged into a general power over lay intestates' estates.

The Barons were, however, not disposed to yield this prerogative to the church, and they accordingly maintained a warm opposition throughout the reign of Henry the Second, their endeavours being sure of the approbation of their royal master, who was at all times too determined even to oust the church from its legal and substantive rights not to offer a firm resistance to what appeared in his eyes as an aggressive innovation, having its sole foundation in the silent wishes or consent of the then degraded Englishmen.

Things continued in this state in England until the death of Henry. But in the second year of his successor a most important alteration was effected in the existing laws of Normandy, which prepared the way for a corresponding change in the legal constitution of this country(o). On the departure of Richard for the Holy Land, a composition was made in Normandy between the clergy, represented by Jean de Coutances, Dean of Rouen, who acted in the absence of Gaultier, the archbishop, and nearly all the bishops of the province on the one side, and Guillaume Fitzraulf, the seneschal, and the barons on the other ; and the results of this arrangement were communicated to the world in an instrument drawn up by the clergy, *in perpetuum*

(o) Matth. Paris, 135. Watts' 1761. Histoire Ecclesiastique de  
 edition, sub. anno 1190. Radulf. la Province de Normandie par un  
 de Diceto Ymagine Historiarum, Docteur de Sarbonne, vol. 4.  
 c. 658. Matth. Westmonast. p.

*memoriam rei (p)*. Among the rights which the lay lords then yielded to the church are enumerated the following: viz., "Item distributio eorum quæ in testamento relinquuntur auctoritate ecclesiæ fiet, nec decima pars ut olim subtrahetur. De bonis vero clericorum. etsi dicantur fuisse usurarii, vel quocunque genere mortis preventi, nihil pertinet ad secularem potestatem, sed episcopali auctoritate, in pias causas distribuuntur. Si quis vero subitaneâ morte, vel quolibet alio fortuito casu præoccupatus fuerit, ut de rebus suis disponere, non possit, distributio bonorum ejus ecclesiastica auctoritate fiet;" i. e. Also the distribution of such things as are left by will shall be made by authority of the church, nor shall the tenth part, as formerly, be deducted. But with respect to the goods of clerks, though they may be said to have been usurers, or to have incurred any kind of death, nothing appertaineth to the secular power, but they shall be distributed by the bishop's authority for pious purposes. But if any man be overtaken by sudden death, or any other fortuitous event, so that he may not dispose of his effects,

(p) This curious document is headed "The Clergy of all Normandy to all the faithful in Christ greeting. (Omnibus Christi fidelibus clerus totius Normanniæ salutem). It then states the particulars of the transaction, and its objects, in the following words: "Ad universitatis vestræ notitiam volumus pervenire contentionem motam inter matrem nostram, Rothomagensis ecclesiam procurante eam in absentia reverendi patris nostri, W(alteri) Archiepiscopi J(ohanne) de Constantiis Rothomagensi Decano et Wil-

lielmum filium Radulphi Senescallium Normanniæ, super quibusdam capitulis de quibus ecclesia Dei conquerebatur sub presentia nostra et baronum domini Regis, assentantibus quoque quam pluribus Normanniæ ministris, hoc tandem fine conquievissse." Fitzraulf had full power from Richard to make this composition, and for that reason Matthew of Paris represents Richard himself as making it (p. 135). "Glorioso Rege Ricardo annuente et omnia disponente."

the distribution of his goods shall be made under the authority of the church.

A concession similar to that made by Stephen in this country to the church had occurred a short time previously in Normandy, and it speedily produced the consequence I have just mentioned. In the first year of his reign, Richard Cœur de Lion, amongst other favours which the welfare of the church, in "the last-mentioned country clamorously demanded of him, granted the following claims: viz., that the testaments of clerks should be executed, and the goods of those who died without having disposed of them should be in the custody or power of the bishop, in order to their being employed in pious uses" (q).

It is a remarkable circumstance that the concession of Stephen, though made considerably earlier, was destined to produce the same effect in England at a later period, and after a much longer interval of time.

No sooner, however, was Richard dead, and the perjured conduct of his successor had aroused all the energies of the barons to the defence of their peculiar privileges against the extortion and rapacity of that despot, than the church also beheld itself sufficiently strong to exact the confirmation of this prerogative under the seal of the most solemn charter on record. It forms the 27th section of Magna Charta; viz., "Si aliquis liber homo intestatus decesserit, catalla sua per manus propinquorum suorum et amicorum suorum, per visum

(q) Histoire Ecclesiastique de Normandie, vol. 4. Les testaments des cleres seront executés, et les biens de ceux qui seront decedés sans eu avoir dispos seront en pouvoir de l'eveque pour

etre employés en pieux usages. The circumstances of the times, and the system of extortion practised against the church, were exactly similar in both countries.

*ecclesiæ distribuantur, salvis cuicunque debitis quæ defunctus ei debebat.*" i. e. "If any freeman dies intestate, his chattels shall be distributed by the hands of his kinsmen and friends, under the view or supervision of the church, saving unto every one the debts which deceased owed him." The words of the charter are explicit, and, as I shall attempt to show, define not only the character and limits of the abstract right, but also evince the particular agency by which it should be exercised and carried into practice.

The improvement which this transfer of authority from secular to ecclesiastical hands effected in the circumstances of the people at large will be better estimated by taking a brief survey of the state of things which preceded it. Hitherto the lord, on his tenant dying intestate, seized the whole of his personalty, without troubling himself either with the payment of the debts or the distribution of any portion of the property amongst the near relations of the intestate. We have already seen when this gross abuse first received a check in the dominions of the King of England, but in France it subsisted to a later period, and was, along with other incidents of the feudal tenure, given away or released at pleasure by the lord, under the title of "*intestatio*" and "*intesteia*" (r). We have also seen that abundant traces of it existed in the times after the conquest in England, and the citation from Cnut's laws, in its inhibitory clause, is evidence that the at-

(r) Decret. Greg. IX. 3, 26, 17. By which the bishop is directed to compel by ecclesiastical censure the performance of a be-quest to charitable purposes. Duncange in *Vocce Intestatus*, and the charters therein quoted, dated 1228, 1250, 1292.

tempt had been made in this country long before that era (*s*).

The church, however, was the indirect, though innocent, author of this evil. The clergy had been forbidden by several general councils to administer the eucharist to any dying person who refused to leave the usual canonical bequests of alms to the poor; an intestate who could thus betray his want of charity on his death-bed was considered damned, and became classed with the wilful suicide, or *felo de se*. To die unconfessed and intestate were synonymous terms, as no priest, in an age when all the learning belonged to the clergy, could receive and reduce into writing the last will of a person whose sins he was forbidden to release by reason of his contumacious and sinful neglect of the leading precept of Christianity, which the canons had thus attempted to enforce (*t*).

The feudal lords most willingly availed themselves of these consequences of intestacy. But they soon omitted to make the distinction which the church had always maintained between the wilful intestate, who, though possessed of ample leisure before his death, to have enabled him to make the requisite charitable bequests, declined to do so (*u*), and the merely unfortunate

(*s*) Ducange, as before. The "*Regiam Majestatem*" lays it down as a rule of Scottish law that "*cum quis intestatus decedit omnia catalla domini sui erunt*," lib. 2, c. 53.

(*t*) Louis the Seventh, in a charter to the inhabitants of Rochelle, grants to them the privilege that, when a man dies, testate or intestate, "*omnes res ejus et posses-*

*siones integre et recte remaneant heredibus suis et generi suo.*" But Saint Louis destroyed the abuse altogether by his statutes: "*Mes se il mouroit desconfes de mort subite, la justice ne la seigneurie ne auroit riens.*" (Ducange, as above.)

(*u*) Samson, Abbot of Berry, would not permit the mortuary (a horse) of Hamo Blundus, a rich



man, who being overtaken by a sudden or violent end, had been forcibly disabled from making a testamentary provision of any kind. Under the pretence of felony, the feudal lords appear to have seized the estates of all tenants dying intestate, without discrimination.

I may, therefore, recapitulate the leading causes and motives of this revolution as follows: viz., the diversion of the studies of the clergy from the law of their country to the imperial constitutions of Rome, their natural desire to rescue the estates of those of their own order who died intestate from the rapacious clutches of their feudal lords, and to apply them to the general benefit of the church of which they were members; and, lastly, an anxiety to recover, even in intestacies, the alms which the canons made it incumbent on all the faithful to bequeath, according to their degree, and by those means to supply the defect of charity in cases where the hand of God had prevented such a disposition. These were the sufficient reasons which urged the church in its endeavour to acquire the control of the general personalty of the kingdom, whether belonging to its own peculiar subjects, or to the laity. The feelings of justice in the one case, and of aggrandizement in the other, would strongly impel them in this course, while their ample and uninterrupted leisure afforded every convenience for the full development and completion of any proceedings necessary to the attainment of that object. But the time was not yet arrived when the church could possess this right in

man of that town, who had died nearly intestate, (v. post,) to be led before the shrine of St. Edmund, and there offered to the

saint, saying these words: "Non decet enim ecclesiam nostram coinquinari munere ejus, qui decessit intestatus."

quiet and undisputed enjoyment. Even after the solemn sanction of the great charter, the Court and the barons still maintained the old struggle, and the jealousy continued to so great an extent that the clause of Magna Charta before quoted was omitted in the confirmation of that famous instrument which the third Henry granted in the ninth year of his reign (1225). That the omission was intentional is amply shown by the remonstrance of the clergy many years after, when this and other injustices perpetrated on the church were openly and boldly represented to the Court. This excites surprise how a celebrated advocate of the civil law, in alluding to this circumstance, can have expressed his sense of the omission in the following words:—  
 “The thirty-second article of the Magna Charta extorted from King John expressly provides against them, (i. e., the asserted abuses practised by the ordinary;) *but it is a curious fact, and one which strongly marks the influence of the papal power in England at that period, that this article was wholly omitted in the Magna Charta, Henry III.*” (x). The explanation is still more curious than the fact, and is, I think, so far from marking the papal influence at that time, that it is pregnant evidence of a determined and uncompromising hostility against its claims.

The clergy, however, were resolved not to give up their prerogative. In 1257, after representing the abuses which prevailed, they exacted a solemn promise from Henry III. to restore the church to its pristine condition. And, upon the faith of his assurance of redress, they drew up a protest against all their “*gra-*

(x) Phillimore's Ecclesiast. Rep. vol. 1, p. 124.

*amina*," or grievances, contained in fifty prohibitory articles, the infraction of any of which they denounced by a threat of the extreme censures of the church (y). These articles are denominated by Matthew Paris, "*Articuli observandi per provisionem Episcoporum Angliæ.*" Each article is meant to form a remedy for the evil detailed in a corresponding section of the "*Gravamina*" to which it constitutes an appendix. Our *gravamen* forms the twenty-fifth section: viz., "*Item mortuo laico intestato dominus rex et cæteri domini feodorum bona defuncti sibi applicantes non permittunt de ipsis debita solvi, nec residuum in usus liberorum et proximorum suorum, et alios pios usus per loci ordinarium quorum (q. cujus) interest aliqua converti.*" i. e. Also, when a layman dies intestate, our Lord the King, and the other lords of fees, appropriating to themselves the goods of the deceased, do not permit the debts to be paid thereout, nor the residue employed for the use of his children and next of kin, and in other pious uses by the ordinary of the place whom it concerns."

The article, while it denounces, also states the abuse in more particular terms; viz., "*Quandocunque etiam laicis intestatis decedentibus domini feodorum, non permittunt ipsorum debita solvi de bonis mobilibus eorundem, nec in usus liberorum suorum et parentum vel*

(y) Matth. Paris, (Dr. Watt's edition,) p. 1816. *Additamenta "Gravamina et Articuli."* The one, as its name imports, is a catalogue of grievances, and the other is the antidote. The articles state themselves to be a general act of the clerical body, secular and regular. "*Archiepiscopi et episcopi de consensu et*

*approbatione inferiorum prelatorum, capitulorum cathedralium et conventualium, nec non universitatis totius cleri Angliæ pro reformatione status ecclesiæ Anglicanæ et reparatione ecclesiasticæ libertatis, hæc prædicta communiter et concorditer provide-runt.*"

alias per dispositionem ordinariorum pie distribui pro defunctis, providemus ut moneantur dicti domini, et eorum ballivi ut atalibus impedimentis desistant, et monitionibus non parentes (saltem pro illa portione quæ, defunctum contingit) per excommunicationis sententiam compescantur.” “Also, whenever, on laymen dying intestate, the lords of fees do not allow their debts to be discharged out of their chattels, nor the same chattels to be piously distributed in favour of his children and relatives, or otherwise by the disposal of the ordinaries for the benefit of the deceased person, we provide that the said lords and their bailiffs be admonished to desist from such hindrances; and, in case of their not obeying the monitions (at least so far as regards the portion which appertains to the dead,) that they be restrained by the sentence of excommunication.” The estates of the bishops and clergy had not escaped the general pillage, but in providing a remedy for the more extensive abuse practised against the property of laymen, the church was assured of equal redress in its own case.

The articles, as might be expected, did not produce the desired effect. A few years after their date, at a provincial synod celebrated at Lambeth (1260), Boniface, who then held the archiepiscopal see of Canterbury, had recourse to the enactment of the constitution afterwards known by the appellations of “*Statutum de Lambeth*,” or “*Cæterum contingit interdum*,” from its first words (z). The expressions are nearly *verbatim* the same as in the article before quoted, and the only difference appears to consist in the complaint being in the former case against practices of general, and in the

(z) This constitution forms a Stratford. Lynd. Prov. lib. 3, recital in one of Archbishop tit. 13.

latter of only occasional occurrence. But the Archbishop will speak for himself:—"Coeterum contingit interdum quod laicis aut clericis divino iudicio decedentibus intestatis, domini feodorum non permittunt debita defunctorum solvi de debitis mobilibus eorundem, nec in usus uxorum suarum, liberorum suorum, vel parentum vel aliter per dispositionem ordinariorum bona prædicta pro eâ portione quæ secundum consuetudinem patriæ defuncti contingit, permittunt distribui pro eisdem." i. e. "But it befalleth sometimes that, when laymen or clerks by the divine judgment die intestate, the lords of fees do not permit their debts to be paid out of their chattels, nor allow the aforesaid goods to be distributed for them, for the use of their wives, children, or relatives, or otherwise, by the disposal of the ordinary, according to the portion which, by the custom of the country, appertaineth to deceased persons."

The next important notice which I find of the subject is contained in the constitutions of Cardinal Othobonus, who was Legate of the Holy See in this country during the year 1268 (a). That prelate prefaces his canon with remarks upon the propriety of a partial distribution of the estate of a person who has been unfortunate enough, in his view, to die intestate in charitable or pious uses, such as may intercede for his soul before the heavenly judge. He then re-enacts the *articulus* before mentioned, designating it a provision formerly made by the

(a) Othobonus or Ottoboni, Cardinal Deacon of Saint Adrian, in his legatine capacity, assembled a general council of the bishops and clergy of England, Scotland, Wales, and Ireland, in the Cathedral Church of Saint Paul, Lon-

don, on the 23d April, 1268, the fourth year of the pontificate of Clement Four. The Archbishops of Canterbury and York, Boniface and Walter, were both present. Lynd. Prov. de Constit. lib. 1, tit. 2, *in notis*.

prelates of this realm. His own words are, "Provide super bonis decedentium ab intestato provisionem quæ olim a prelatiſ Regni Angliæ cum approbatione regis et baronum dicitur emanasse, firmiter approbantes districte inhibemus ne prelati vel alii quocunque bona intestatorum hujusmodi quocunque modo recipiant vel occupent contra provisionem prædictam" (b).

It is very curious that this obvious reference to the *articuli* has been equally misunderstood by the early and the later glossers on the legatine constitutions. John of Athon, or Acton (c), who is supposed to have flourished during the fourteenth century, refers to an

(b) *Constitutiones Legatinæ*, Sharrock's edition, p. 90, tit. 24, "de bonis intestatorum." The constitution begins, "Cum mortis incerta præoccupatio, si anticipet ultimi arbitrii voluntatem, ut conficiendi testamenti, vel extremæ dispositionis adimat vitæ decisio facultatem, agit humana pietas miserecorditer in defunctum cum res temporales quæ illius fuerunt per dispositionem in pios usus ipsum juvando sequerentur et coram cœlesti iudice pro ipso propitiabiliter intercedant, providi," &c.

(c) John de Athona, or of Acton, appears to have flourished some time in the fourteenth century, but his exact age is uncertain; and he affords no particulars respecting himself except that he was a canon of Lincoln Cathedral. He must have been living after 1285, as he quotes 13 Edward I., and before the *prerogative* of the Archbishops of Canterbury and York in testamentary matters had been legally recognised. John of Athon has two notes upon the constitution

recited in the text. The first, on the words "a prelatiſ regni," is as follows:—"Discretam et ordinatam provisionem in parlamento regni debere primarie incipere a prelatiſ maxime super contingentibus operi pietatis, cum hæc provisio fuerit parlamentalis," &c. The second, on the words "cum approbatione regis;" viz., "Scilicet illustris Eduwardi, post conquestum primo, convocato suo concilia apud Gloucester anno regni sui sexto, ipsis quidem ibidem statutis post modum in pleno parlamento suo ad Westmonast. revocatis post Pascha, anno regni suo xiii. ubi in illius parlamento xix. c. sic legitur contineri. Cum post mortem aliqujus decedentis intestati et obligati aliquibus in debita bona deveniant ad ordinarium disponenda, obligetur de cætero ordinarius ad respondendum de debito quatenus bona sufficiunt, eodem modo quo executores respondere tenerentur si testamentum fuisset." The edition quoted from is the *Provinciale*, printed by Jodacus Badius, at Paris.

act of Parliament, passed in the *sixth year* of the reign of *Edward I.*, the enactments of which, he asserts, were afterwards revoked by the statute of Westminster. As there exists, however, no vestige of such an act, and the reference is contained in a constitution passed in the reign of Henry III., we may fairly conclude that the Canon of Lincoln was mistaken in his interpretation. The expressions also used by the Legate cannot be fairly construed into an allusion to a parliamentary enactment, which the Italian priest would have known as well as any modern statesman, could never be said to have emanated from the bishops with the sanction of the king and lords. Dr. Sharrock, the editor of Lyndewode's *Provinciale*, adopted a somewhat similar anachronism to that of John of Athon, and applied the words of the constitution to the well-known 13th Edward I. (1285), a statute passed about seventeen years subsequently. Blackstone, with equally good success, dreams about the charter of Henry I., and Bishop Gibson confesses his inability to discover what provision Othobon alluded to (d).

We now begin to fall into the beaten track of quotation, and arrive at the celebrated 13 Edward I., 1285, (commonly called the statute of Westminster,) the contents of which, though so well known, I shall make no scruple of reciting, in order that I may be better enabled to point out what I consider its meaning and relation: "Cum post mortem alicujus decedentis intestati et obligati aliquibus in debito, bona deveniant ad ordina-

(d) Comment, vol. 3, book 3, c. 7. Gibson's Codex, p. 572. The reader will observe that there is a verbal difference between the statute, as quoted by John of Athon, and the common edition.

rios disponenda, obligetur de cœtero ordinarius ad respondendum de debitis quatenus bona defuncti sufficiunt eodem modo quo executores hujus modi tenerentur si testamentum fecisset." i. e. "When, after the death of any person dying intestate, and bound unto some in debt, the goods come to the ordinary to be disposed of, the ordinary shall from henceforth be bound to answer for the debts, so far as the goods suffice, in the same manner as executors would be obliged to answer in case he had made a will."

But to enable us to form a just opinion of the bearing of this statute, it will be necessary to premise a few words respecting the ancient mode by which the disposition of personalty was regulated.

By a principle of law which the nations of Europe appear to have borrowed from the Roman empire, every person was limited in the disposal of his property, whenever he died leaving a wife or children. But if unmarried and childless, he was left at full liberty to give away the whole of his estate in whatever manner he might choose.

This custom appears to have prevailed in England at a period before the Norman Conquest, as it is found amongst the incidents of tenure in Gavelkind,<sup>(e)</sup> which

(e) Custumal of Kent, at the end of Robinson's—"Common Law of England, or the Customs of Gavelkind:"—"Ensement soit les chateux de gavelkinde partis en tres apres les exequies et les dettes rendues, si il y eit issue mulier en vye, que le mort eyt la une parte, et les fitz et les filles muliers l'autre parties, et la femme la tierce parte. Et si une issue mulier en vye ne soit, eit le mort la meite, et la femme eu

vyse l'autre meytie." The civil law forbade the disinheritance not only of the children of the testator, but even extended its prohibition to ascendants, as parents, grandchildren, and great grandchildren; and, among collaterals, brothers and sisters had also the same civil charge upon his estate. The widow, however, had no claim of this kind. This right was denominated "*legitima*" or "*legitima pars*," and its omission by a testa-



is universally considered to be a relic of the general system of Saxon law, and not the peculiarity of one county only. The portion which a testator might dispose of by his will was denominated the *portio defuncti*, or in English the "dead man's part," and at the time the act 13 Edward I. was passed, and long after, that portion and the corresponding inalienable estate were regulated in the following manner.

If the testator left behind him a widow and children, he was allowed to bequeath only one third of his property; if he left only a widow, or only children, he might then dispose of a moiety. In either case, the remaining portion of his estate devolved as matter of right to the wife or children, under the designation of their reasonable parts (*partes rationabiles*), for which they had their action at common law.

The same division prevailed where the subject was the estate of a person dying intestate; for, as in the former case it was held that a man could only dispose

tor, whether partial or entire, was supplied by an action, in the one case, "*in repletionem legitimæ*," and in the other, "*de in officioso testamento*," by the latter of which the will would be partly annulled. (Justin. Instit. lib. 2, c. 18.) The principle of law became obsolete in England as late as the period of the Commonwealth, and was never since revived. (Blackstone's Comment. book 2, c. 32). Swinburne in his time speaks of it as a custom, "not oneley throughout the province of York but in many other places besides, within this realm of England." Though even then, he relates, it was maintained by some lawyers, that, "the division

was made not by force of the common law of the realm, but only by force of custom." (3rd part, s. 16, p. 104, edit. Lond. 1590.) There is no doubt, however, that it was once the general law. Fleta makes the present law the exception, and lays down the former as the general law: "Nisi sit consuetudo quæ se habeat in contrarium, sicut in civitatibus burgis et villis." (Lib. 2 c. 57.) And Magna Charta, 9 Hen. III. c. 18: "Omnia catella cedant defuncto, salvo uxoriejus et pueris ipsius rationabilibus partibus suis." The writ de rationabili parte bonorum. (Cowel, edit. Oxon, 1664.

of a section of his property, even if he made a will, so by the converse proposition he was considered capable of dying intestate only so far as regarded the same portion (*f*). The clear residuum, after the payment or deduction of the debts and reasonable parts, before the jurisdiction was vested in the ecclesiastical ordinary, was claimed as his due by the king or feudal lord whose tenant the intestate had been while alive; but, on the foundation of the ecclesiastical authority, the *portio defuncti* devolved to the ordinary for his distribution and disposal (*g*).

An ancient gloss informs us that the ordinary distributed that portion of property in such pious and charitable uses as he might conjecture that affection or duty would have dictated to the mind of the intestate if he had been enabled to have effected his testamentary arrangements (*h*). What these pious uses were will appear in the course of this introduction. This division of an intestate's estate may still be traced in the peculiar customs of London and York. By the law which there exists, an estate is, under these circumstances, divisible in the following manner, if the intestate leave a widow and children, viz. one third to the widow, another third to the children, and the remaining third between the widow and children, agreeably to the proportions laid down by the statute of distribution as the general law of the realm. But to return:—It appears from the terms of the 13 Edward I., that before its

(*f*) Ducange, sub voce Intestatus.

(*g*) John of Athon, in his note on the constitution of Othobon, before referred to, at the words "contra provisionem prædic-

tam," adds "sc. parlamentalem omnino residuo sibi nullatenus, imbutando, sed potius juxta defuncti propositum conjecturatum in pios usus distribuende."

(*h*) 1 Jac. 2, cc. 17, 18.

enactment the distributive portion of the ordinary in the above cases was a third or a moiety of the gross amount of the intestate's personalty, without making any deduction for his debts. The origin of this practice may be explained as follows: the ordinary required the intended administrator to swear to the gross amount of the property without deduction of any kind, and, having this estimate before him, calculated the share devolving to him for distribution at a third or moiety of the actual estate, not making a proportionate drawback for the intestate's debts.

Against this inconvenient proceeding on his part the act under consideration must have been intended to constitute a remedy. Its provisions went to charge the ordinary's portion with the payment of the whole of the debts of the intestate. But this, if it had been enforced, would have had the effect of absolutely nullifying in most cases the charitable use to which that portion was in part destined, as it may be supposed that in general the debts due by the deceased would either considerably diminish it, or else wholly swallow it up, and thus leave unsatisfied the right which the Church had long possessed, as it were, in trust for the soul of the deceased.

The English Church began accordingly to take such remedial measures as lay in her power, in order to rescue this portion from the hands of the law. In 1287 (two years after the date of the statute) a synod was held at Exeter, and the following (c. 50) appears amongst its enactments (i):—"Si qui vero laicorum decesserint intestati, de bonis eorum per locorum ordi-

(i) Ducange, *Intestatus*.

narios solite præcipimus ordinari ut pro animâ defuncti in pios usus totaliter erogetur:" i. e., "If any layman die intestate, we command it to be enjoined by the ordinaries of the place, as a custom, that the goods of the same be wholly laid out for the soul of the deceased."

This constitution did not achieve the effect apparently proposed by the hierarchy, or perhaps it was meant merely as a bold experiment on their part, from which they did not contemplate an entirely favourable result, and we may imagine that they would be well satisfied if they succeeded in obtaining by those means a modification or partial relaxation of the invidious statute. At all events, the speedy if not immediate consequence was the proportioning the distributive portion of the ordinary by the net value of the estate, the debts becoming a rateable charge upon all its parts (*k*).

The act declares that, in all cases of intestacy, the ordinary should thenceforth be answerable for the debts of the intestate. It did not, however, impose a responsibility for the first time; it only gave a more extended application to a pre-existing liability. Previously to the passing of the act, we have seen that the debts were, in practice, charged upon the *partes rationabiles*, as upon a portion independent of the ordinary's control; and the creditors were left to recover against the widow and children, or either of them, without troubling the ordinary at all. But when there were no deductions to be made for these reasonable parts, the whole of the estate became distributable under the ordinary's directions, and was then of course generally obnoxious to the legal

(*k*) Fleta, lib. 2, c. 57, p. 124. of Edward II. and III. Bracton, The author of Fleta is supposed lib. 2, c. 26. to have flourished in the reigns

charges upon it. This latter state of things imposed a corresponding liability on the ordinary himself, personally, when he as *executor legitimus* administered such an estate. And in the event of undue waste on the part of his delegate, the administrator, the secular power would lend its aid in legally enforcing the claims of the unsatisfied creditors, as effectually as it was now empowered by the act 13 Edward I. to afford it without distinction in all cases of intestacy. The liability of the ordinary was therefore, except in the case before mentioned, coeval with his power, and from this liability originated his practice of taking bond of the intended administrator, or rather not suffering the appointment to be considered complete until such bond had been given. The following remarks will explain this more clearly.

In the early periods of the ecclesiastical jurisdiction the ordinary himself was the party suable for a *devastavit* committed by his deputy, and was left to his own remedy against the latter. Even at the present day, in case of letters of administration *ad colligendum bona defuncti*, the action would lie against the ordinary, and not against the administrator, though the usual bond would be given previously to the grant (*l*).

This responsibility of the ordinary extended at first even beyond cases of mere intestacy. He was, under certain circumstances, liable for waste in only confirming an executorship by the authority of his probate. It was in consequence of this that Archbishop Peecham enacted a constitution, inhibiting a religious person from acting as the executor of a will, until his superior

(*l*) Terms of the Law, Tottel's Edition, *suo voce* Admin.

had given bond on his behalf to render a faithful account of his administration, and to answer for all damages that might through him accrue to the ordinary (*m*).

The Archbishop, in the same manner, prohibited religious persons from accepting the appointment of *distributor bonorum* or *legatorum*, an office of a nature hardly distinguishable from that of a testamentary executor.

These instances of the ordinary finding it incumbent upon him to take security where he only confirmed a title already conferred by a testator, clearly evince what was his practice in cases where, in the exercise of his own authority, he actually created a title in another, for whose acts he became responsible at law.

In commenting upon the portion distributable by the ordinary, and the supposed effect which the statute had in controlling his disposition, Sir Samuel Toller (*n*) says, that in the previous age—

(*m*) Lynd., lib. 3, tit. 13. "Adjiciendo duximus statuendum quod nullus religiosus permittatur executor existere alicujus testamenti, nisi superior suus caveat pro suo religioso hujusmodi, quod sufficienter exequatur et fideliter reddat et integre rationem de residuis, si quæ fuerint et de damnis quæ per ipsum emergerint loci ordinario absque difficultate qualibet respondebit."—"Et quia non nulli religionis habitum deferentes, licet non sunt executores tamen distributores efficiuntur defuncti, temeritate propria, vel imprudentia alienâ, ex quo magnam provenire videmus bonorum hujusmodi læsionem,

idem circa hujusmodi distributionem præcipimus observari, quod circa executionem superius est provisum ne aliter executioni vel distributioni hujusmodi se immisceant sub poenâ anathematis inhibentes," &c. The Archbishop held a synod at Reading in 1279, and another at Lambeth in 1281. It does not appear from Lyndwode to which epoch the date of this constitution is referable. This constitution is an extension of a former one of Archbishop Boniface. For *Distributor*, see *Duncange, sub voce*.

(*n*) The Law of Executors and Administrators, chap. 3.

“He (i. e. the ordinary) converted to his own use, under the name of church and poor, the whole of such (i. e. an intestate’s) property, without even paying the deceased’s debts. To redress such palpable injustice, the Statute of Westminster, 2 (or the 13) Edward I., c. 19, was passed, by which it was enacted that the ordinary is bound to pay the debts of the intestate so far as his goods will extend,” &c.

He then adds, “Although the ordinary were now become liable to the debts of the intestate, yet the residue, after payment of debts, continued in his hands, to be applied to whatever purposes his conscience might approve.”

A very learned and celebrated modern civilian has the following notice on the same subject (o) :—

“In the early periods of our history the ordinary had by common law the absolute disposal of the personal property of all intestates, and, under the pretext of applying their goods to religious purposes, possessed himself of them, not only in cases where the deceased left a widow and children, or other near relations, but in defiance also of the just claims of the creditors. On this footing the law continued under the Norman kings and the first sovereigns of the line of Plantagenet; but when the free spirit of our constitution, which had been long labouring under the pressure of the feudal institutions and the shackles of papal superstition, commenced those struggles which ultimately led to its emancipation, the abuses practised by the ordinary in the administration of intestate’s estates became in their return subjected to correction and control. \* \* \* \* The

(o) Dr. Phillimore’s Reports, vol. 1, p. 124.

13 Edward I., st. 1, c. 19 (commonly called the statute of Westminster), made the estates of intestates liable to the payment of their just debts."

These two quotations embody the opinions commonly held upon the subject of ecclesiastical jurisdiction, and, if they were true, would exhibit it in by no means a favourable light. They represent it as taking its rise from an infraction of the constitutional laws of the kingdom, and as rapidly acquiring growth and strength from a shameless system of plunder, exercised against private property in a manner unexampled even in those times of secular outrage and extortion.

The scene of all this is laid in England, and the English clergy are paraded as the actors ; but there is no historical narrative to justify those authors in laying so heavy a charge against the English Church, and neither the letter nor the spirit of the statute before recited affords any ground for such a supposition, nor hints the least suspicion that it had ever been the fact, or that the design and view of the statute were directed to its future suppression. The assertion which both these authors agree in, viz. that the Church, at an early period of English history, was accustomed to seize the *whole effects* of every intestate, does not require refutation : the origin of the mistake has been already sufficiently shewn. The only question that remains is, in what manner the *portio defuncti*, or distributable portion, was directed to be applied by the ordinary, which will at the same time explain the precise meaning of the disposition of property in *pious usus*. We have already seen that the *portio defuncti* varied with the difference of circumstances, and was sometimes a third, or a moiety, and at others comprised the entirety of the



intestate's personal estate (*p*). The judicial method of disposing of it was as follows :—if necessary, the *partes rationabiles* were deducted, and then recourse was had to the ordinary for the purpose of obtaining his directions respecting the manner and proportions in which the balance should be disposed of. The ordinary accordingly allotted portions of this balance amongst the wife and children, if the deceased left any such ; but if not, amongst his nearest of kin, and finally directed the administrator to bestow a small and inconsiderable sum in purely charitable and religious purposes, for the benefit of the deceased's soul. The *portio defuncti*, therefore, in one case was a section of the effects distributable amongst the same parties, who were entitled to reasonable shares, and in the other extended to the whole of the intestate's property. This disposition and the payment of debts were numbered amongst the pious uses to which the ordinary applied the estates which came under his control, and it was in order to effectuate such distribution, as well as to indemnify

(*p*) The constitution of Boniface affords us a clear understanding on this point (see *supra*), viz., "Nec in usus uxorum suarum, liberorum suorum vel parentum, vel aliter per dispositionem ordinariorum," &c. These words enumerate the three cases, where a man left a wife and children, other relations only, or died without any ; for the word "aliter" refers to the last. Ducange, in reciting this constitution, has omitted the whole of the above clause, and upon this omission (at best careless) he has grounded a tirade against the Church, viz., about the ordinary's paying the intestate's debts, and keeping all

the rest of the effects to compensate him for his trouble. See also the *Articuli* and *Gravamina* for the same expressions (*vide supra*), and a quotation from a constitution of Archbishop Stratford, afterwards given, and the note. Oughton, or rather Clerke (*Ordo Judiciorum*, tit. 219, s. 4), says, "Omnis administrator tenetur, idonee cavere . . . . ad distributionem residui bonorum defuncti (solutis debitis, funeralibus et cæteris oneribus) in pios usus, vel inter pauperes et consanguineos defuncti juxta judicis arbitrium, dummodo tamen rationabilis portio allocetur administratori."

himself against the claims of unsatisfied creditors, that the ordinary took bond of the intended administrator (*q*).

This charge of extortion made against the Church appears the more unbounded and preposterous when we find that the exercise of this ecclesiastical jurisdiction was carried by the ordinary to so high a pitch of delicacy that no fee was exacted for the faculty or grant of administration. The only expenses to which the administrator was liable were incurred merely *pro opere et labore*—i. e. for the trouble of the scribe in writing, and for the materials of the seal and the parchment employed in framing and completing the necessary instrument. The possibility even of a contrary practice was strictly guarded against by the fact of its perpetration being made one of the principal interrogatories, which the archiepiscopal visitor, in his pro-

(*q*) The concluding words of the bond, which is still used in its ancient form in all cases to which the statutory caution does not apply, are as follows:—"And lastly do at all times hereafter clearly acquit, discharge, and save harmless the within-named Lord Archbishop of Canterbury, the said judge, and all other officers of the said court, against all persons having or pretending to have any right, title, or interest, unto the said goods, chattels, and credits of the said deceased, then this obligation," &c. The lately published chronicle of Jocelin of Brakelonde (*De Rebus Gentis Samsonis Abbatis Monasterii Sancti Edmundo*, edited by John Gage Rokewode, Esq., 1840,) gives a curious instance of distribution of

a residuary estate left undisposed of by the testator, p. 67. Hamo Blundus, described as "unus ex ditioribus hominibus," of the borough of St. Edmund, made a will, by which he affected to bequeath property to the amount of three marks only. This pretence of property being contrary to the public report of his wealth, the abbot, as ordinary, called for an inventory of the effects (*omnia ejus debita et katalla mobilia*), which were in reality found to amount to two hundred marks. The abbot, therefore, decreed the following distribution, viz., one third portion to the brother of the deceased, another to his wife, and the remainder, "*pauperibus consanguineis suis et aliis pauperibus.*"

gress through each diocese, administered to the bishop himself, and also to the dean and chapter of his cathedral church (s). The same care was observed in regard to granting probate of a will (t).

The ordinary's power of directing and compelling a distribution became in the course of the period succeeding the reformation almost entirely extinct, through the continual enmity and attacks of the judges at Westminster, who, to their eternal disgrace, refused to enforce an Ecclesiastical bond against the administration for a distribution, thus leaving the remaining next of kin entirely at his mercy. This evil was the more alarming, inasmuch as the ancient division of the intestate's property into the *partes rationabiles* and *portio defuncti*, was no longer the general law of England, but existed only as the particular custom of certain boroughs and districts. By these means, the next of kin who was expeditious or fortunate enough to obtain letters of administration before the others became possessed of the whole of the deceased's property, and though nominally bound to the ordinary to distribute

(s) Lyndewode, Prov. lib. 3, tit. 13, de testamentis, in a constitution of Archbishop Stratford, "Statuimus ut pro probatione vel approbatione seu insinuatione testamentorum quorumcunque nihil per episcopos, seu alios ordinarios capiatur omnino, per clericos tamen scribentes insinuationes hujusmodi sex denarios duntaxat recipi permittimus pro labore.

(t) Cotton MSS. 4 Galba. E, fol. 61. "Articuli super quibus inquirendum est in visitationibus prelatorum (of Robert Archbishop of Canterbury.) Under the head of "querenda e persona

episcopi," occur the following:

"Item quid fecit de bonis intestatorum, et an aliqua de hiis sibi appropriavit." • • • • •

"Item an pecuniam pro literis institutionum, collacionum inductionum vel pro probacionibus testamentorum vel absolucionibus ab onere administracionis cujuscunque vel ab excommunicationis sententia a suis ministris permittat." Amongst the "querenda circa episcopum" is the following: "Item an bona aliqua intestatorum in suos usus converti permiserit."

the effects as he should direct, could not be compelled to part with a single shilling, except in the payment of debts, although there were numbers of kinsmen in the same degree of consanguinity with himself.

It was this proceeding on the part of the common law judges, which it is well known occasioned the enactment of the celebrated Statute of Distribution. (u)

Where the old division of property remained, as the province of York, the administrator till a later period applied the "dead man's portion," or *portio defuncti*, to his own personal use.

The disposition of a certain portion of property to pious uses in the more precise and restricted sense of charity and almsdeeds became obsolete about the same time. (y)

The next remark of our authors, that the ordinary became obliged to pay the debts of the deceased, owes its origin to the same mistake as the former assertion, from which it is in fact deducible. The act itself says nothing about the ordinary paying debts, as if he himself interfered in the actual administration of the intestate's estate. It only says that the ordinary should be thenceforth responsible for the debts of the deceased, a liability in the eye of the law to which he is

(u) Stat. 1 Jac. 2, c. 17, s. 18. Blackstone's Comment. Book 2, c. 32. It was the exaction of what the next of kin considered too great a share of the third, that is meant by the complaint of Fleta, that the ordinaries—"nullo vel saltem indebitam distributionem faciunt." (lib. 2, c. 57.)

(y) In Elizabeth's days Swinbourne says, "of this distribution of the residue (in pios usus) there

is but small use in these days, as well for that the residue is commonly left to the executors, as also for that the executors are afraid that some unknown debt due by the testator should afterwards arise, and so the executor be compelled to pay the same out of his own purse." Sixth Part, s. 20, p. 235, Edit. Lond. 1590.

exposed even at the present day, and to meet which the ordinary formerly (as now) provided himself with security from the administrator.

I will now continue my view of the progress of this branch of the Ecclesiastical Jurisdiction. At a period of nearly a century from the date of Magna Charta the lords of manors were still disinclined to yield their old claim up as lost. So late as 1342, Archbishop Stratford was compelled, in consequence of their strenuous opposition to his ordinaries, throughout the province of Canterbury, to pronounce that all persons so offending had *ipso facto* incurred the lawful sentence of the greater excommunication. His words stating the abuse are as follows, viz. "Quidam etiam domini temporales et eorum ballivi bona decedentium ab intestato in suis districtibus ad ipsos dominos pretendentes fore quamvis erronee devoluta, ne per ordinarios bona hujusmodi pro debitorum solutione sic decedentium ac in alios pios usus pro ipsorum animarum salute convertantur utiliter prout censensu regni et magnatum regni Angliæ tanquam pro jure ecclesiasticæque libertate ab olim extitit ordinatum, impediunt in derogationem ecclesiasticæ libertatis, jurisque, et jurisdictionis ecclesiasticæ impedimentum et læsionem enormem." i. e. "Even some temporal lords and their bailiffs, pretending that the goods of persons dying intestate in their districts (i. e. manors or sokes,) have devolved to the lords, although erroneously, prevent such goods of persons so dying from being usefully applied towards the payment of their debts and in other pious uses, for their souls' health, as was of old ordained by the consent of the king, and of the barons and great men of the kingdom of England, as for a right and liberty of the Church, to

the impairing of such right and liberty of the Church, and to the great hindrance and damage of the jurisdiction of the same.” (z)

But the Ecclesiastical Jurisdiction was soon to be fixed on a solid basis superior to all future attacks. About sixteen years after the last-mentioned constitution was passed at Westminster, the celebrated 31 Edward III. (1357), a statute which has been commonly though incorrectly reputed to be the origin of executors dative, or administrators as they now exist. The words of the act (c. 11) are, “Item acorde est et assentu qe en cas ou homme devie intestat, les ordinaires facent deputer de plus proscheins et plus amis du mort intestat pur administrer ses biens les queux deputes eient action a demander, et recoverer come executoures les dettes dues au dit mort intestat en la court le roi pur administrer et despendre pur l’alme du mort et respoignent auxint en lacourt le roi, as autres as queux le dit mort estoit tenuz, et obligez, en mesme la maniere come executoures respondrent et soient accountables as ordinaires si avant come executoures sont en cas de testament, si bien de temps passe come de temps a venir:” i. e. “It is accorded and assented that, in case where a man dieth intestate, the ordinaries shall cause to

(z) Lynd. lib. 3, tit. 28. This allusion of the archbishop to the Great Charter is understood by Blackstone to refer to the Charter of Henry I. Comment, vol. 3, book 3, c. 7. This recital leaves little doubt about the application of the words “pious uses.” And another constitution of the same prelate (Lynd. lib. 3, tit. 13. de Testamentis ita quorundam, &c.) is equally explanatory:—“Necum

ab intestato decedentium (clericorum) solutis debitis eorundem bona quæ supererunt in pias causas et personis decedentium consanguineis, servitoribus et propinquis seu aliis pro defunctorum animarum salute, distribuant et convertant nihil inde sibi retento, nisi forsan aliquid rationabile pro ipsorum ordinariorum labore fuerit retinendum.

be deputed certain of the next and most lawful or honest friends of the intestate deceased to administer his goods, which deputies shall have an action in the King's Court, to demand and recover, as executors, the debts due to the said intestate deceased, to administer and dispend for the soul of the deceased, and shall answer likewise in the King's Court to others, to whom the deceased was holden and bound, in the same manner as executors shall answer. And they shall be accountable to the ordinaries as executors are in case of testament as well for the time passed as the time to come."

The supposition that executors *dative* were not in existence before the passing of this act, or rather that the ordinary acted by any other administrator than the next of kin, is abundantly disproved by the clause in Magna Charta before quoted, where the expressions used are to the effect that the intestate's property shall be distributed,—“*per manus propinquorum suorum et amicorum suorum, per visum ecclesiæ.*” It appears by this, that the ordinary was from the beginning directed to clothe with the character and power of *executor dative* one of the intestate's nearest relatives; who was under that authority to distribute the effects amongst the other members of the family, in such manner and proportion as the Church, following the system of the civil law, should regulate and direct. (*b*)

(*b*) So in the general letter issued in 1250, by the English bishops, after receipt of Pope Innocent's brief in favour of the crusade under Richard Earl of Cornwall, “*De bonis vero cruce signatorum qui decedunt sine testamento, quantum ad portionem*

*eos contingentem ordinetur per amicos defunctorum et fratres deputatos ibidem ad prædicandum ut deputetur in subsidium terræ sanctæ quantum poterit sine scandalo.*” Mat. Paris, *Addittamento*, p. 1141.

It is improbable that the ordinary could have acted in the administration of an intestate's estate by an official administrator, or one of his own dependents, as besides the temptations this supposed practice would have afforded to the officers of his registry, in a manner totally insupportable through so many generations, the simple machinery and resources possessed by the chancellor of a bishop's consistory would have been in every respect insufficient to affect the execution of trusts nearly as great and numerous, perhaps, as those under which the modern Courts of Equity now groan.

No authority can be adduced in favour of the position; and the facts on which it is made to rest are not only improbable, but, from all that is known of the general history of the times, entirely unprecedented throughout the whole continent of Europe, and, as far as we may judge from the experience of later ages, too absurd to have ever happened at all.

The intention of the act was directed to the following purposes. Previously to its passing, an action in the goods of an intestate was capable of being brought only in the court of the ordinary himself, as I shall in the course of this introduction attempt to shew. Against this restriction the act was proposed as a relief, by giving to the executor dative a *persona standi* in the King's Court, and the power of there instituting and answering all actions respecting the intestate's estate. In order, however, that the terms of the enactment, by thus rendering him more independent of his constituent, might not be construed to extend to the abolition of the ordinary's right of calling upon his delegate to render an account of his administration, a special clause



was inserted, as has been seen, providing that, as well for the time past as for the future, the ordinary's deputies should be accountable to him in the accustomed manner.

The helping hand of the law having thus at length fixed the power of the ordinary on a firm and solid foundation, it never again became the subject of dispute; but from the epoch of that statute, the ordinary was enabled to extend and perfect his system through ages of undisturbed tranquillity. The secular authorities no longer contended with the Church for the possession of this privilege, and the primacies of Isip and Langham, of Sudbury and Arundell, passed quietly over, without any one of those prelates finding himself compelled to resort to the enactment of a new constitution or canon in his defence, or to denounce the censures of the Church against a profane aggressor (c).

But the manner in which the new spiritual privilege should be divided, after it was finally taken out of lay hands, appears to have been long a question between the diocesans and their metropolitan.

The history of their contention, which at times assumed rather a warm character, and the establishment of the *prerogative* or superior right of jurisdiction of the metropolitan in these matters of testamentary jurisdiction, is, I think, almost totally unknown in the history of our jurisprudence, none of our legal antiquarians appearing to have been aware of any of the circumstances attending it. The following remarks, therefore, may not be unacceptable to the reader.

(c) Viz. from 1362 to 1415, the date of Henry Chycheley's translation. With his constitutions the *provinciale* of Lynde-woode terminates.

We have already seen that the power of administering the personal estate of an intestate was conferred, by Magna Charta, upon the Church. But that instrument did not presume to recommend or select any particular ordinary by whom, in preference to all others, the right was to be exclusively enjoyed, no order of the hierarchy being alluded to therein. The charter must therefore be construed to have vested the right in all the existing tribunals authorized by the Church, and to have left to the ecclesiastics, in case of any contest of jurisdictions, a discretionary power of defining and settling their peculiar limits and extent.

In order, therefore, to ascertain to what persons it was proposed to confide this important trust, we must first see who were the dignitaries exercising, by themselves or their substitutes, the jurisdiction previously belonging to the Church.

To begin with the lowest ordinary in the hierarchy, viz., the archdeacon:—He held pleas of criminal matters, and imposed public penance and other punishment upon lay or clerical offenders (*d*). The cognizance of testamentary suits appears also to have been conceded to him.

The deans and chapters of cathedral churches had a similar jurisdiction, including also the exclusive privilege of determining all matrimonial disputes arising within their precincts.

But the ordinary from whom the authority of the former was entirely borrowed was the bishop. The corrective jurisdiction belonged to him by the divine right of his apostolic office, and such other authority as

(*d*) Ayliffe's *Parergen*, *Jur. Angliæ*, p. 95.

he was possessed of had been the gradually accumulated gifts of the princes of Europe.

The archbishop was of course superior to all. Being legate of the Holy See as well as metropolitan, he enjoyed not only an appellate or querelatory jurisdiction in all cases previously laid before the diocesan, but might also proceed *primâ instantiâ* in any matter which fell within the cognizance of the Church (e). As metropolitan or legate, he was concurrent ordinary with every bishop in his diocese. This authority was not confined to the clergy, but extended over the whole body of the laity, who were as immediately subject to the archbishop as they were to their diocesan or his archdeacon. The extraordinary power of the legation amply supplied any deficiencies in the *jus metropoliticum*.

Such, then, being the constitution of the Church, each of the before-mentioned ordinaries fell within the scope and meaning of the charter, for none could pretend that a preference was shewn to him under the general terms of that instrument.

But the bishops were not inclined to put so liberal, or, in fact, so just a construction upon the words of the

(e) Reg. Pecc. fol. 145. "Cum ecclesia Cantuariensis tali gaudeat privilegio in corpore juris redacti, quod archiepiscopus, qui pro tempore fuerit causas subditorum suffraganeorum suorum etiam per simplicem querelam audire possit et debeat." This was not mere opinion on the part of Archbishop Peccham; he followed it up by excommunicating the Bishop of Hereford, who had resisted the exercise of this concurrent power in his diocese, denying the right of his metropolitan "de causis

subditorum suorum ullomodo cognoscere per querelam" (ibid). The same Archbishop also says (Reg. Pecc., fol. 206), "Consistorium nostrum in ecclesia Beatæ Mariæ de Arcubus Londiniis existens, quod quadem peculiari affectione eo magis diligimus quod comprovinciales Cantuariensis ecclesiæ potentiis presidentium, frequenter oppressi ad illud tanquam ad fontem justitiæ undique confugiunt ut inde hauriunt congruum, contra suas molestias medicamen."

charter. They relied upon foreign precedent, and on the continent the civil and canon laws had both concurred in declaring that probate of wills was the right of the episcopal order alone (*f*). The English bishops therefore contended that this new concession to the Church in England was to be regulated by those laws, and consequently that it belonged to them alone, or at least conjointly with their inferiors, the archdeacons and deans; for with the latter they appear never to have had any contention at all (*g*). So far as regarded the metropolitan, they asserted an uncompromising monopoly (*h*).

But during the period immediately following the origin of this privilege the metropolitan would appear

(*f*) Since 1125 the Archbishop of Canterbury for the time being had been *legatus natus* of the Roman See. This dignity was conferred in that year, by Honorius the Second, upon William Archbishop of Canterbury and his successors for ever. (Cotton MSS. Galba, E. 1.) The only reservation in a papal grant of this kind was of the faculty of deposing bishops. The power was otherwise as general as that of the pope himself. Alexander the Third, in a letter to all the suffragans of Canterbury, writes (Decret. Greg. 9, 1, c. 30, s. 1, de Officio Legati), "Sane licet idem archiepiscopus (i. e., Cantuariensis) *metropolitico jure* audire non debeat causas de episcopalibus vestris nisi per adpellationem deferantur adeum, *legationis* tamen *obtentu* universas quæ per adpellationem vel querimoniam pervenerunt ad suam audientiam audire potest et debet, sicut qui in provincia sua vices nostras gerere

comprobatur." See also the gloss on that portion of the text.

(*g*) Decret. Greg. 9, 3, c. 26, pp. 17 and 19, and Cod. Justinian, L, nulli si quis ad decl. c. de episc. et cler.

(*h*) The archdeacon proved wills in the time of Edward I. In the Cotton MSS., Faustina, B. 2, p. 151 (the chartulary of Saint Mary's Convent at Clerkenwell), is preserved the will of Henry de Enfend, containing a devise to that religious body. At the end is the act of probate:—"Probatum est hoc testamentum Londini aula archidiaconi Middelsex, dio commemoracionis animarum, anno domini MCC., nonagesime coram nobis officiali Middelsex, jurato infra scripto Johanne executore de fideliter administrando et de fidei inventario faciendo, et fidei computo reddendo, cum super hoc fuerit requisitus et jurata Alicia executrix," &c. This will was also proved in the Hustings Court.

to have been in no degree solicitous to advance his title to a participation in it. Of his own option he seems never to have attempted to claim, in this respect, a concurrent or co-ordinate jurisdiction with the suffragans of his province.

After some time, however, it became apparent that there were cases in which the system of probate from each diocesan was productive of many and serious inconveniences. For example, whenever a person left effects within any diocese besides that in which he died, his executors or his next of kin (for the case would be the same) were compelled to extract the necessary probate or letters of administration in each separate jurisdiction. The estate of the deceased was consequently exposed to enormous detriment, and instances would occur where the property, being inconsiderable, might be wholly exhausted in the mere preparatory expenses of probate, and the creditors and legatees, by those means, be defrauded of their just and equitable claims (i).

The system of probate by the episcopal ordinary unavoidably involved this inconvenience. It became, therefore, an urgent and imperative necessity that some

(i) The origin and objects of the *prerogative* are clearly explained in the MS. register of Robert of Winchelsey :—“ Memorandum quod cognicio et examinacio ut ultima voluntas defuncti debite demandetur (q., executioni *omitted*), ne executores defuncti qui beneficia vel bona temporalia vel spiritualia in diversis et pluribus diocesisibus, dum vixit obtinebat sumptibus in singulis episcopaliibus per plures circuitus fatigati,

defuncti substantiam in circuitu hujusmodi expendant in parte plurima vel consumant, testamentorum execucio retardetur, defuncti revelacio differatur, quæ foret per actus suæ voluntati ultima consonos promovenda, et propter alias causas rationabiles, ad Dominum Cantuariensem, archiepiscopum qui pro tempore foret, notorie pertinere noscuntur.”

remedy should be applied, as this oppressive state of things was entirely incompatible with the interests of a commercial and wealthy people, as England had even then commenced to be. The public could not long bear with patience that so large a proportion of a deceased's estate should be consumed in nothing more than the expenses of obtaining the ordinary's seal.

Urgent complaints from legatees and creditors distressed by the insufficiency of an estate, which had suffered in this manner, to discharge their respective demands, were made to the archbishop from all quarters. They urged him in other cases of the same kind to interpose his metropolitan authority, and assume himself the administration of the deceased's estate.

His right, even as metropolitan, to interfere in the peculiar jurisdiction of the suffragan, was admitted by the canon law, on certain occasions, without regard to the prior claim of the other, and this could be fairly shown to be one of those cases (*k*). The negligence, or rather inability, of the diocesan to afford his subject

(*k*) Dr. Ayliffe (Par. Jur. Anglie), following the authority of the Decretals of Pope Gregory the Ninth (lib. 1, tit. 31, cap. 11, et gloss. ib.), says—"Though an archbishop has this jurisdiction (i. e., excommunication and interdict) over his own suffragans, yet he has not jurisdiction over the persons and estates of men dwelling and existing in the diocese of his suffragan bishop, unless it be in some particular cases, viz., when the suffragan is negligent, as aforesaid, after three admonitions." What should constitute negligence was, of course, in the breast of the archbishop. Therefore this passage, on closer in-

spection, would seem to establish the pretensions of the metropolitan. Negligence and incapacity lead to similar results, and where property existed in several dioceses, neither diocesan was able to afford complete justice. The necessity of an executor resorting to each several ordinary for an accumulative or successive authority was itself a gross injustice; and this inability of affording full relief was as palpable an evil as a direct and positive denial of justice; and both of them were an acknowledged foundation of the appellate jurisdiction of the metropolitan.

laity their full measure of justice was a sufficient ground and justification in law for a direct interference of the archbishop.

He had for some time forborne the exertion of his right as metropolitan, out of consideration for the privileges of his suffragans, or perhaps a fear to encroach upon what they had hitherto, though erroneously, regarded as their peculiar prerogative.

The exact epoch when the archbishop first interfered in this manner is not very clear, but we may still approximate to it tolerably well.

It is probable that the *prerogative* had been asserted, and the archbishop had lent a helping hand to the suitors in his province before the middle of the reign of Henry the Third; and from what we know of the energy of Boniface, we might be justified in giving him credit for so happy a provision. It is certain, however, that the archbishop found no friends to the exertion of this right amongst the bishops, who firmly refused to recognize it as a legitimate exercise of the *jus metropoliticum*.

This pretension of the archbishop, therefore, became the signal for a violent contention between him and his suffragans, which continued for the course of nearly a century.

The argument put forward by the bishops on this occasion, that the granting of probates, or letters of administration, belonged to them as the *ordinarii loci*, was admitted on the part of the archbishop, but he denied the conclusion which they had drawn from thence in their own favour, on the ground that he also was local ordinary throughout the whole of his province, having as metropolitan a co-extensive authority with each diocesan. He also declared that his reason for

this exertion of his prerogative was no ambition of his own, but a just and deliberate acquiescence in the prayers of his provincial subjects, whose interests demanded that a paramount and central jurisdiction should be established for their relief (*e*).

There appears less reason in this opposition of the diocesans to the metropolitan, as a corresponding and strictly analogous scheme of jurisdiction was maintained by them in relation to their own subordinates—the archdeacons and deans. They claimed to interpose their authority in those cases only where the deceased, at the time of his death, had personal effects in different archdeaconries or other jurisdictions within their respective dioceses. Otherwise, they admitted the jurisdiction of the inferior judge to be well founded.

In spite of the remonstrance of his diocesans, the archbishop pursued the course which he had commenced. But in 1268, whilst the contest was still rife, the papal legate, Ottoboni, arrived in this country, with full powers for reforming the condition and discipline of the English church. He directed his attention to this matter, and with the view of removing for the

(*e*) Matth. Parker, Cant. Archp. “*de Antiquitate Britannicæ Ecclesiæ*,” (Lond. 1729, p. 43,) and his authorities, the MS. Registers of Morton, f. 206, and Peccham, ff. 144-150. This is still the style of the Diocesan Court of London, though disused in the other consistories. To found the jurisdiction of the former, its instruments allege that the deceased person whose estate is under administration had, “whilst living, and at the time of his death, goods, chattels, and credits in divers archdeaconries or jurisdic-

tions within the diocese of London, by reason whereof the proving, approving, and registering the will, and the granting administration of all and singular the goods, chattels, and credits, and also the auditing, allowing, and finally discharging the account thereof, are well known to appertain only and wholly to us (*i. e.* the bishop), and not any inferior judge whomsoever, by right, privilege, and prerogative of our Cathedral Church of St. Paul, London, by laudable custom and lawful prescription for time immemorial.”



future all occasion for dispute on the subject at least of the estates of beneficed clergymen, he enacted that, where a testator during his lifetime had possessed benefices in divers dioceses, his will should be approved by the bishop in whose diocese he died.

It is clear that this constitution of the legate, whatever weight it might have, as bearing upon the subject matter of dispute, could not be considered as finally determining the general question at issue between the metropolitan and his suffragans. And the ecclesiastical lawyers of those times did not attempt to wrest or extend its meaning into any constructive application to the case of the laity (*f*). In fact, from the silence observed by the legate upon what was to be the law in respect of the estates of laymen dying under similar circumstances, a fair inference could even be drawn that the point was at length settled in favour of the metropolitan. For in this instance public utility appears to have weighed so strongly on the mind of the legate as to have deterred him from reviving the strict formalities of the canon law, notwithstanding he had been commissioned from the Court of Rome for its more effectual enforcement in this country. He therefore carefully refrained from making any reference or allusion to this point of ecclesiastical law. But at the

(*f*) Constitutiones Legatinæ Regionis Anglicanæ, D. Othoboni, tit. 15. "Super approbatione siquidem testamenti ejus qui in diversis diocesisibus beneficia dum vixerit, obtinebat approbationem illius episcopi, in cujus diocesi testator decessit (*fidem*) volumus adhiberi." The word "*fidem*" is omitted in the Rubric. "Vult enim approbationem epis-

copi in cujus diocesi testator qui in divisibus diocesisibus beneficia obtinuit decessit adhiberi." Vide the glosses of John of Athon on this constitution, and of Lyndewode on a constitution of John Stratford. The latter says, "Sed illa constitutio loquitur tantum in clericis beneficiatis ut ibi notatur per Johannem de Athouâ, tit. 13."

lowest estimate of its weight and importance in countenancing the archbishop's demand, this constitution left the question as open as it found it. The metropolitan was not barred by the sentence of a superior from persevering in the conduct which he had adopted, through a conviction of its legal competency and justice.

After this constitution, opposition ceased for some time on the part of the bishops, and we have instances on record of the metropolitan prerogative having been exercised by John Peccham (*g*).

The utmost limit of ecclesiastical prescription, which amounted to forty years only, was now long since elapsed, when John, the bishop of the extensive diocese of Lincoln, who could not rest quiet under what he considered to be a severe defalcation of the rights of his church, resuscitated the old dispute. On the 27th March, 1309, he invoked the aid of the head of the church, by an appeal to Rome. The Bishop of Lincoln appears to have waited till the restoration of Robert, the archbishop, to his functions, before he determined on commencing active proceedings in defence of his asserted right.

About four years previously, the archbishop had been suspended from the exercise of his office, in consequence of the personal animosity of the king. His consequent want of favour at both the English and Papal Courts appears to have instigated the diocesan in the course which he took. He could not, however, perhaps have commenced proceedings at an earlier date,

(*g*) Boniface died in 1274; his successor, Robert Kilwarby, in 1272; and John Peccham in 1278. The latter was succeeded by Robert of Winchelsey. Decret. Greg. 9, lib. 2, tit. 26. "*Quadragenalis præscriptio omnem actionem prorsus tollit.*"

as it was incompetent to prosecute a matter so intimately concerning the dignity of the primacy against the mere *administrator spiritualium et temporalium*, who had been appointed in the usual manner during the suspension of the archbishop (h).

The parties being at issue, stated their case as follows : First, the Bishop of Lincoln contended that the proof and registration of the wills, the commission of administration of the goods, the taking the accounts of the executors named in the wills of those persons who, whilst living, possessed considerable (plura) spiritual or temporal estate in the city and diocese of Lincoln, besides property in other dioceses in the province of Canterbury, or in other places immediately subject to the church of Canterbury, wherever they may have died, and the cognizance of such suits as might arise between creditors and legatees, or other complainants, and the executors of wills, under the above circumstances, so far as regarded the effects actually existent in his own episcopal city and diocese, appertained to him and his church of Lincoln, both by law and by custom approved, and hitherto observed and maintained.

The archbishop's case lay in small space. He denied the allegations of his suffragan, throwing on him the burthen of proving them. This he was by law entitled to do, having now the *possessio statús* and prescription on his side, and standing as he did in the character of defendant in this suit, he could only be evicted from his prerogative by the most stringent and evident proofs of its illegality and injustice.

(h) Adam Murymuth. He was suspended in 1305, and restored in 1308.

In consequence of the delays of the Roman consistory, the cause was not determined in the lifetime of Archbishop Robert, and it continued in the same state for some time after his decease. But in 1319 the appellant, the same Bishop of Lincoln, renounced his right of prosecuting the ancient appeal, a compromise having been effected between him and Walter Reynolds, the successor of Winchelsea to the see of Canterbury. The terms of the agreement were as follows, viz. The Bishop of Lincoln and his successors within that see should retain their privileges before enumerated, with a reservation to the Archbishop and his successors of the metropolitical right of calling for and inspecting the accounts rendered to the bishop of the estates of persons dying under the circumstances before referred to, in order that the former might the more easily and correctly audit and discharge all other accounts due to himself of the remaining part of the same estates. At the same time, for fear that the latter concession might be construed into an entire dereliction of the independence of the diocesan, by seeming to countenance the claim of superiority advanced by the metropolitan, it was expressly provided that the latter should raise no exception or question in regard to such accounts, but that he should pass his approval upon them as a matter of course. (*h*)

(*h*) The original is recorded in the Archiepiscopal Register, Winchelsey, fol. 7, and is in the following words—"Noverint universi præsentes literas inspecturi quod cum inter piæ memoriæ dominum Robertum Cantuariensem Archiepiscopum totius Angliæ Primatem ex parte una, et dominum Johannem Dei gratia Lincolniensem

Episcopum ex altera, occasione probacionum sive insinuacionum et commissionum administracionis bonorum; necum reddicionum rationum executorum testamentorum eorum qui dum vixerunt plura bona spiritualia sive temporalia in civitate et diocesi Lincolnue nec non et in alijs diocesibus et diocesi provincie Can-

This compromise was embodied in an indenture of two parts, and the archbishop as one of the parties set

tuariensis autinlocis aliis ecclesiæ Cantuariensi immediate subjectis hactenus habuerunt ubicunque obierint: Quas probaciones, insinuationes et commissiones rationum reddiciones, cognitionesque causarum quæ per creditores vel legatarios vel quoscunque alios querelantes, contra executores testamentorum hujusmodi pro bonis præcipue hujusmodi decedentium in sua civitate vel diocesi existentibus, ad se et ecclesiam suam Lincolnensem pertinere debere constanter asserit, tam de jure quam de hactenus approbata, pacifice observata et obtenta consuetudine ac præservata; præfato domino Archiepiscopo contrarium asserente, orta fuisset materia quæstionis hujusmodi occasione, inter Dominum Episcopum Lincolnensem partem appellantem, et præfatum Archiepiscopum partem appellatam, et in Romana curia lis penderet ac penderet in præsentem: demum hujusmodi litis et quæstionis materia inter Reverendum Patrem Dominum Walterum Dei gratia Cantuariensem Archiepiscopum totius Angliæ primatem, qui nunc est, et dictum dominum Johannem Episcopum Lincolnensem in forma quæ sequitur perpetue valitura amabiliter conquievit, viz., quod dictus Episcopus Lincolnensis et successores sui episcopi, jure ordinario perpetuis temporibus in futuro habeat probaciones insinuationes, commissiones, administrationes bonorum, audiciones reddicionum rationum executorum testamentorum decedentium, quorumcunque parochianorum qui plura bona in diversis diversibus Cantuariensis provinciæ dum vixerint ut habuerint pro bonis

illis quæ ibidem decedentes in civitate vel diocesi Lincolnensi tempore mortis suæ habuerint, et nec non expediciones earum et cognitiones causarum prædictarum, quæ occasione bonorum hujusmodi inter partes quascunque quatenus ad forum ecclesiasticum pertinet in Lincolnensi diocesi suscitari contingit: reservato dicto domino Archiepiscopo et suis successoribus post reddiciones calculaciones seu expediciones alii racionii administrationis executorum hujusmodi testamentorum summa et ultima inspectione hujusmodi, et ab administratione executorum absolute finali racioniorum, calculacionum, et expedicionum, sicut ut metropolitanus ea occasione quod decedentes prædicti obtinuerunt in diversis diocesis suæ provinciæ plura bona inspicere voluerit. Item tamen quod idem dominus Archiepiscopus et successores sui archiepiscopi suas reddiciones, calculaciones, et expediciones, per prædictum episcopum factas absque aliqua calumnia et sine difficultate approbet. Renunciarunt in super partes prædictæ appellacionibus hac occasione prædicta interpositis omnibusque prosecutionibus earum ac juris processibus pendentibus sibi competentibus hinc et inde. Inquorum testimonium sigilla dictorum patrum præsentibus literis per viam indenturæ confectis hinc et inde sunt appensa. Actum et datum quoad nos Walterum Archiepiscopum prædictum VII. Id. Januarii, anno domini Willesimo CCC. nonodecimo in prioratu Huntingdon."

his seal to it on the 7th January, 1319, at the Priory of Huntingdon.

This agreement with the Bishop of Lincoln was, as we shall see hereafter, in all probability observed only by the Archbishop who was party to it, and his immediate successors, Stratford and Mepham. To the others it appeared in the light of a rash and unnecessary concession of an important branch of the *jus metropoliticum*, which consequently could have no power of binding them to its observance.

It only regarded the diocese of Lincoln. And with the other diocesans the Archbishop does not appear to have entered into terms of compromise or agreement in this respect, for no ostensible opposition would seem to have been offered on their part.

With regard to the other dioceses of the province of Canterbury, the Archbishop now commenced a more extensive exercise of his privilege, and the applications to him or his vicar-general for the favour of the archiepiscopal seal became every day more numerous.

During the primacy of John Stratford, who followed Simon Mepham (the successor of Walter), we find many instances of the right of the metropolitan being energetically enforced. He assumed the offensive, and with a high hand challenged, and repealed as illegal and imperfect, all former grants of probate or administration made under circumstances which clashed with his superior pretensions.

Among these cases occurs the following:—Sir Peter de Columbers and his brother Stephen, a clergyman, inadvertently proved the will of their mother, Dame Alice, before the Bishop of Rochester. It was

afterwards discovered, by the executors, that the testatrix had left effects also in the diocese of Canterbury, and in other dioceses of that province. They were accordingly compelled to re-prove the will before the Archbishop, who administered the oath in person on the 18th day of June, 1334, at the chapel of his manor of Otford, in Kent. The probate states, that the "approbation and registration of wills, under the circumstances before mentioned, is well known specially to belong to the archbishop, by the *prerogative* of his church of Canterbury (i)."

(i) The probate is transcribed in the register. "XV. Kal. Julii, anno Domini millesimo CCC XXXIII. Coram nobis Johanne, permissione divina Cantuariensi Archiepiscopo, totius Angliæ primati, et apostolicæ sedis legato, in capella manerii nostri de Otford, domino Petro de Columbers, milite, et Stephano de Columbers, clerico, filiis et executoribus testamenti Domine Aliciæ de Columbers defunctæ in dicto testamento sive schedula annexo nominalis personaliter constitutis. Idem Petrus et Stephanus insinuacioni et probacioni testamenti dictæ domine Aliciæ, et commissioni administracionis bonorum ad testamentum ejusdem spectantium et in diocesi Roffensi existentium coram episcopo Roffensi de facto, renunciarunt expresse. Nosque hujusmodi insinuacionem, probacionem, et commissionem administracionis judicialiter reprobantes tanquam factas coram eo qui nullam ad hæc potestatem habebat, pro eo quod dicta Domina Alicia bona in nostra et aliis diocesibus nostræ Cantuariensis provincie de quibus

testari potuit et testabatur, dum vixit obtinebat; cujus testamenti insinuacio, registracio, et approbacio ad nos de prerogativa ecclesiæ nostræ Cantuariensis ex causa præmissa specialiter dinoscitur pertinere; insinuatoque approbatoque testamento prædicto coram nobis ejusdem die loco et anno supradictis, et per nos legitime pronunciato pro eodem commissimus in forma juris administracionem bonorum dictæ defunctæ ubicunque in nostris diocese et provincia Cantuariensi existentium executoribus supradictis. Edmundo de Polle executore in dicto testamento nominato tunc presente, et onus administracionis recusante subire; reservantes nobis potestatem, domino Roberto de Shipton, executori in dicto testamento nominato administracionem hujusmodi committendi cum eam a nobis informa juris venerit et peterit. In cujus rei testimonium huic scedulæ nostrum fecimus apponi sigillum. Datum apud Otford, die et anno supradictis et nostræ translacionis primo."

In the same year, during the absence of the Archbishop on the Continent, we find the will of a London citizen re-proved before the Vicar-General, Adam of Murymuth, the well-known historian of the times (*k*). This will was, in the first instance, erroneously proved before the archdeacon of Surrey, who is described as consenting to the cancellation of his own probate, on the ground of its having been granted "contrary to the approved custom of the church of Canterbury."

Presuming on this compromise between the metropolitan and the Bishop of Lincoln, the ecclesiastical lawyers of the age proposed to effect a modification of the general evil, by introducing into England the regulations of the canon law on this subject. By the Decretals of Gregory the Ninth, the probate of a will granted by the local ordinary in whose jurisdiction the testator died was a proof sufficiently effectual for all other dioceses where he possessed property, and those other ordinaries were competent only to commit administration, and audit and pass the accounts, of the effects situate within their respective jurisdictions (*l*).

(*k*) 14 Kal. Jan. 1334, the will of Paganus Bursarius was approved by the Vicar-General, "*facta primitus reprobacione insinuacionis testamenti prædicti per magistrum Will. Juge, archidiaconum de Surrey, contra consuetudinem ecclesiæ Cantuariensis approbatam de expresso consensu archidiaconi.*" The archbishop, who is stated in the probate to be "*in remotis agens,*" had gone on a royal mission to Rome and Paris, for the purpose of arranging the plan of an expedition to

the Holy Land, at that time projected by the Kings of France and England. Vide Adam Murymuth. In the same register occurs the probate of the will of John Everdon, Dean of Saint Paul's, London, in which are found the following expressions:—"Facta primitus reprobacione insinuacionis dicti testamenti per quoscunque inferiores ordinarios prius factæ."

(*l*) Decret. Greg. 9, lib. x, tit. 3, c. 26, pp. 17 and 19.



But this principle of law was never acknowledged in England, except in the special case before mentioned of the Bishop of Lincoln. It was a half measure that, if carried into practice generally, would have afforded no satisfaction, either to the nation or to the contending parties. This project, however, existed only in the suggestive minds of the commentators. John of Athon, who has a proposition to this effect, has the appearance of merely theorizing, and at the same time restricts his remarks to the case of beneficed clerks (*m*). Lyndewode alludes to it as an obsolete point of law, long overridden and determined by a contrary prescriptive usage.

The exemption from the general law, which the Bishop of Lincoln extorted from Archbishop Walter, was, as we observed before, of short duration; its impolicy, if not injustice, was apparent to everybody. Accordingly, in 1354, Simon Islip, the archbishop, recalled the privilege which his predecessor had granted, and reduced the see of Lincoln to its former state of subjection (*n*). Whenever, therefore, the latter intruded himself into the peculiar province of the metropolitan, he rendered himself liable to a similar control with the rest of his episcopal brethren. An instance of the kind occurred in 1362 (*o*). Henry, Duke of Lancaster, died

(*m*) John of Athon, in his note to Othobon's Constitution, says—"Quoad probationem testamenti talis defuncti, non dicit quoad recipiendum computum et rationem administrationis bonorum talis defuncti, immo hoc puto uni diocesano et alteri prout sigillatim uni vel alteri bona hujusmodi subsunt." Lyndewode, after referring to the question of law,

says—"Hodie autem in Anglia Archiepiscopus Cantuariensis in sua provincia tam quoad probationes et insinuationes hujusmodi testamentorum quam etiam quoad commissionem administrationis bonorum et auditionem compoti omnia expedit," &c. (Provenc., tit. 13.

(*n*) MS. reg. Islepe.

(*o*) MS. reg. ditto, folio 172.

at Leicester, and was buried in the collegiate church of Our Lady, in that town. The Bishop of Lincoln, presuming on the circumstance of that nobleman having died in his diocese, proceeded to approve the will, and in the month of April in the same year administered to the executors, at the castle of Leicester, the usual oath of execution; but, in the following month, the probate which the diocesan had granted was revoked by William of Witleseye, the official of the Arches' Court, and the original will was proved again before him (*p*).

The opposition of the diocesans was now powerless, if not extinct.

The above fact also shows that the exercise of this privilege of the metropolitan was then conducted on an exclusive and systematic plan, admitting of no infringement or usurpation on the part of the bishops.

It was probably during this period that the archbishop sought and obtained the sanction of the Court of Rome to his enjoyment of the prerogative. He had not applied for it before; for, as long as he only exerted this right in a few and isolated instances, it could not attract the attention of that court; but when it ap-

(*p*) Proof of this kind is also a commission directed to a clergyman (probably some rural dean), by William of Wytlesye, in 1398—9. (MS. reg.) "Will., &c., dilecto filio domino Roberto Alder, rectori ecclesie parochiales de Pundfeld, Londinensis diocesis salutem. Dominus Johannes, rector ecclesie de Twayl, Norwicensis diocesis, officialis domini Archidiaconi de Sudbury se prætendens, ad quem nulla jurisdictio pertinet quandam Christianam relictam et executricem Johannis

Pecke de Stokeneyland defuncti dictæ Norwycensis diocesis ad comparandum coram se occasione quorundam bonorum mandavit. Tibi committimus quod de præmissis te informes, &c. Datum apud Heggston vii idus Martii, 1398. In the register *Blamyre*, preserved in Doctors' Commons, the bull of confirmation granted to Henry Dene in 1483 is recorded—(confirmacio prerogative Cantuariensis ecclesie approbandorum testamentorum).

peared conspicuous as an inherent and integral privilege of the metropolitan see, and as one which was also, in a political view, of the utmost consequence to the power and importance of the Church, it became an object of regard, and was confirmed by the Pope with the other branches of the *jus metropoliticum*. The omission of this amongst the usual and unquestioned appendages of the archiepiscopal title might tend to invalidate the jurisdiction, especially as it had always been asserted to be a spiritual and purely ecclesiastical right, which had existed in the possession of the Church for an unlimited period of prescription.

It will have been observed that at first the archbishop advanced his claim on all occasions where a deceased person left personal effects in several dioceses within his province, without paying any regard to its comparative value or amount. But this afterwards underwent a considerable modification; for the metropolitan, overcome by the remonstrances of his suffragans, at length consented to relax his strict right, and to content himself with a partial enforcement of it, viz., in those cases only where the deceased might be considered to have left *bona notabilia*, or considerable property, in each separate diocese or peculiar jurisdiction of his province (*q*). Here a fresh subject for contention arose: an uniform standard of *notability*, applicable to the general property of every diocese, could not be easily or quietly established, for the estimate of property might vary in every county or borough, according to the degree of wealth and luxury of their inhabitants.

(*q*) Swinburne on Testaments, part 6, s. 9.

Accordingly, we find that different arrangements were made with the metropolitan in various dioceses, which may perhaps still remain in force at the present day. In the diocese of London a composition was at some time effected between the metropolitan and the bishop, by which a less sum than ten pounds was to be considered as not falling within the rule which constitutes *bona notabilia*. But the general rule in this respect was, and still is, that a deceased's property must amount to the sum of one hundred shillings, or five pounds, in order to found the jurisdiction of the archbishop; and this is also the criterion by which the ecclesiastical courts test the means of a suitor who applies for justice *in forma pauperis*.

Another question remains, for the authorities do not agree as to whether it was only necessary that the gross value of the effects in the dioceses should amount to five pounds, or that there should be that distinct sum in one of such dioceses at least (*r*); but the former opinion, in all probability, is the most correct one, for otherwise the scantiest estates would have been exposed to the greatest expenses, and to those very evils for the prevention of which the metropolitical authority was so beneficially interposed in all other cases.

(*r*) Coke says, "All testaments are proved, and administration granted, in the Prerogative Court of the several archbishops respectively, where the party dying within the province of such archbishop hath *bona notabilia* in some other diocese than where he died." (4 Inst. 335.) Rolle says, "If he who dieth hath goods in both dioceses, to the amount of five

pounds in the *whole*, the same shall be *bona notabilia*, and consequently under the archbishop's jurisdiction." (Abridg., 908, 909.) But the modern law (Canons, 1603) makes *bona notabilia* to depend upon the deceased having goods or debts in any other diocese than that in which he died, to the value of five pounds.

Nor could the next of kin or executors of a deceased hope to escape the vigilance of the officers of the registries, by a silent occupation of the deceased's effects, unauthorized by the seal of the ordinary, as it was then the practice of the ecclesiastical courts to issue an *ex officio* citation or warning, and serve it on all executors and next of kin generally, with a denouncement of excommunication in case of their non-compliance with the law (s).

During the whole of the period of which we have been treating, wills were proved before the archbishop himself or his vicar-general, and the oath was on all occasions actually administered by them. But as the property subject to the administration of the metropolitan increased, through the advancing commerce and prosperity of the country, the business of the prerogative, increasing in a corresponding ratio, became too onerous for one single judge, viz., the official and vicar-general (for the offices were usually united), who could only devote to this extraordinary function his leisure from purely ecclesiastical transactions and questions.

These considerations at length occasioned the formation of a new court. In 1443 Archbishop Stafford removed for ever from the Court of Arches, of which his official principal was judge, its *original* jurisdiction over wills and intestacies, transferring the discharge of the office of the prerogative to an entirely new func-

(s) A specimen of this kind of warning appears in Reg. Stafford. f. 8. It is directed to the appariter-general, Christopher Furneys, who is commanded to cite all executors and "bonorum ad- ministratores, occupatores, sive detentores," to appear on the fifteenth day after service, before the archbishop, and the "auditor audientię causarum et negotiorum," &c.

tionary, who should preside in a distinct and separate court, dignified with the appellation and style of Commissary of the Prerogative Court of Canterbury (*t*). The first upon whom the Archbishop conferred this appointment was Alexander Prowet, Bachelor of the Decrees (or Canon Law). This commission, which has never been printed, contains matter too curious to pass over without quoting; I may therefore be excused for giving it at full length (*u*). “Johannes, &c., dilecto in Christo filio magistro Alexandro Prowet, in decretis baccalaureo, salutem, gratiam et benedictionem. Cum approbacio et insinuacio omnium et singulorum testamentorum quorumcunque testatorum defunctorum nostræ Cantuariensis provinciæ habentium tempore mortis suæ bona de quibus testari potuerint, in diversis diocesibus nostræ Cantuariensis provinciæ, commissio administracionis bonorum hujusmodi testamenta concernentium, computi, calculi, sive racionii administracionis prædictæ audicio, absolucio et finalis liberacio ab eodem, nec non dispositio sive administracionis commissio bonorum quorumcunque ab intestato decedentium obtinentium bona hujusmodi ut præfertur ad nos solum, et in solidum et non ad alium judicem inferiorem quotiens nobis placuerit de prerogativa ecclesiæ nostræ Cantua-

(*t*) There is no doubt that this was the first appointment of a commissary of the prerogative, and there is no trace of such an officer before that year. When Robert of Winchelsey convoked a dignified assembly in the Church of Saint Mary-le-Bow, London, in order to ensure the most solemn sanction to the new statutes of his Court of Arches, the only judges of the metropolitan courts

then in existence were the official principal and the dean of the arches (Cotton MSS. Galba IV.); and at a subsequent period (1368) William of Wytleseye recorded, in his register, the commissions of the official and dean only, amongst the judicial appointments made by him on the occasion of his translation to Canterbury.

(*u*) MS. Reg. Stafford, fo. 8.

riensis et consuetudine laudabili et antiqua legitime prescripta ac a tempore et per tempus cujus contrarii memoria hominum non existit, pacifice et inconcusse notorie observata, dignoscantur pertinere: nos considerantes quod non nulli bona hujusmodi obtinentes ab hac luce indies subtrahuntur, ac volentes prout ex officio nostro pastoralis astringimur jura et libertates ecclesiæ nostræ Cantuariensis prædictæ conservare illesa quoad admittendum et recipiendum probationes testamentorum personarum hujusmodi ubicunque infra nostram provinciam Cantuariensem predictam decedentium, hujusmodi testamenta quæcunque insinuandum et approbandum, nec non administracionis omnium bonorum hujusmodi testatorum seu aliorum ut premittitur, obtinentium ab intestato decedentium, in nostris civitate diocesi vel provincia existentium executoribus in testamentis hujusmodi nominatis, seu aliis juxta juris exigentiam et predictam consuetudinem approbatam committendum et bona hujusmodi auctoritate nostra si oporteat in casibus a jure permissis sequestrandum ac calculum sive computum administracionum hujusmodi bonorum audiendum ac eis si fuerit faciendum de et super administracione eorum acquietancias faciendum ac concedendum ac insuper quibuscunque iudicibus nobis inferioribus etiamsi episcopali fulgeant dignitate et aliis quotiens de jure fuerit faciendum, nec quisquis in premissis contra prerogativam et consuetudinem predictam attemptent vel faciant aliquammodo attemptari inhibendo ad querelasque et suggestiones quascunque in hac parte vel premissorum occasione in forma juris rescribendum, nec non in omnibus et singulis causis et negotiis premissis conjunctim et divisim

qualitercunque concernentibus, sive ex officio mero mixto aut promotio seu ad cuiuscunque partis instantiam motis quovis modo sive movendis cognoscendum, huiusmodis que causas et negotia cum suis emergentibus incidentibus et connexis quibuscunque judiciali calculo terminandum cæteraque faciendum et expediendum quæ in premissis seu eorum aliquo necessaria fuerint vel opportuna, (insinuacione, approbacione testamentorum et bonorum administracionis commissione quorumcunque episcoporum, ducum, comitum, baronum, militum ac aliorum nobilium dictæ nostræ provincie, ut premittitur, decedentium, et finalis computi sive racionii administracionis huiusmodi bonorum audicione nobis specialiter reservatis(x),) tibi, de cuius fidelitate et circumspectionis industria gerimus plenam fidem, committimus vices nostras cum cuiuslibet coercionis canonice et ea quæ decreveritis execucioni debite demandandi potestate, ad premissaque omnia et singula, ut premittitur, faciendum et exercendum, te nostrum præficimus et deputamus commississarium generalem, sigillis tamen et signetis quibuscunque doctorum defunctorum nobis et cancellario nostro specialiter reservatis. Volumus autem quod veras copias testamentorum et commissionum huiusmodi fideliter remittas. Dat. in Hospitio residentie nostræ Londoniis,

(x) The reservation of the archbishop may be explained by a passage in Archb. Parker's "De Antiquitate Britannicæ Ecclesiæ." In the "Privilegia sedis Cantuariensis et Prerogative" of that work (p. 41) he says, that the archbishop claims, as a sort of ecclesiastical heriot, "annuli

et sigilla cunctorum (i. e. episcoporum) *præter eum qui optimus sit*;" but the archiepiscopal registers, which are undoubtedly of more authority, shew that the "pontificalis annulus" was the perquisite of the archbishop. (Winch. fo. 17, Walter Reyn. fo. 17.)



quarto die mensis Octobris, anno Domini millesimo CCCC<sup>mo</sup> XLIII, et nostræ translacionis primo" (y).

In accordance with the reservation contained in this commission, we find in the following month (November 22, 1443,) the archbishop administering the oath, at his palace of Lambeth, to the executors named in the will of the celebrated Lyndewode, who had died honoured with the prelacy of St. Davids (z).

But this privilege was not long coveted by the metropolitan. He afterwards conceded to his commissary the complete possession of the prerogative.

These were the final arrangements of the archbishop in regard to the exercise of his prerogative. The constitution of the court which Archbishop Stafford formed for this exclusive purpose has ever since, with the solitary exception I have just mentioned, remained in exactly the same condition.

The enjoyment of the prerogative for more than two centuries having now founded a prescriptive right in the archbishop, it might have been imagined that all opposition or question respecting its legality would have been by this time effectually discouraged. But the fact was otherwise. During the primacy of Morton, Richard Hill, the Bishop of London, revived the old contention with his metropolitan. It would appear that he acted on the assumption that the question was

(y) According to Archbishop Parker, there would seem to be a distinction between the archbishop's vicar-general and his chancellor. He says, "Finitimus et conjunctus his (i. e. auditoribus audientię) quondam fuit archiepiscopi cancellarius, qui ea quę contentiosę jurisdictionis

non erant, sed officio mero gerebat. \* \* \* Sed cancellarii et auditorum officia in unum diu collata sunt qui in ecclesia Paulina et Londinensi consistorio judicia dat. (p. 46.)

(z) MS. Regr. John Stafford, fo. 142.

still an open one, as the appeal which had been interposed, in the case of the Bishop of Lincoln, to the papal court, had never been prosecuted to a definitive sentence. But the triumph of the metropolitan, and the submission of his diocesan, were the necessary results of this dispute (a).

The right was at a subsequent period acknowledged by the statute of appeals, (24 Hen. VIII., c. 12,) which, though it restrained the general exercise of the extraordinary power of the metropolitan, expressly reserved the prerogative of the two Archbishops of Canterbury and York in testamentary matters.

There was another branch of practice connected with the testamentary jurisdiction, the existence of which would scarcely be suspected by the modern reader. It is the recovery of debts on certain occasions.

For a long period, actions of this nature were instituted solely in the Ecclesiastical Court, whenever the debt in question formed part of the estate of a deceased person; or when, on the contrary, it constituted a charge upon it, being in the one case at the instance of the executor or administrator, and in the other of a creditor of the deceased. It was compulsory on the former to commence proceedings for this purpose in the spiritual court, as it was at the same time equally incumbent upon him to submit to them, if brought against himself by a creditor, without either party being permitted to invoke the aid or interference of the secular courts in the shape of a prohibition.

It will lessen our surprise that the Church should have once asserted the cognizance of debts, if we con-

(a) MS. Regr. Morton.

sider that, in the early age of ecclesiastical jurisdiction, unless the executor had recourse to the Court Christian, he would have no means whatever of recovering any debt due to his testator; for the common law gave to him, *quâ* executor, no remedy at all. The character of executor, either testamentary or dative, was unknown to our municipal law, and he could, therefore, have no *persona standi* in its courts. He was the creation, as the other was the *élève*, and foster child, of the canon law.

Before the jurisdiction was narrowed by the encroachments of the common law, the ecclesiastical tribunals, having the entire and unlimited administration of a deceased's personal estate, necessarily, and without infringement on the rights of the latter, embraced certain questions of debt, for without them they could scarcely be said to afford to suitors that effective relief which had been contemplated by the legislature when it assigned the testamentary jurisdiction into the hands of the Church.

This power belonged, therefore, to the Ecclesiastical Court, by a fair construction of the original provisions of Magna Charta.

But the institution of an action of this nature, generally and irrespectively of the administration of a deceased's estate, was invariably, and upon all occasions, discountenanced by the common law judges, as trenching too largely on their exclusive province, without, as they might consider, a sufficient show of reason or practical utility for the attempted usurpation. The damages which the jealousy of those courts, in a case of this kind, constantly awarded to the individual who, from being the defendant in the preceding action, had now

changed sides and become himself the plaintiff, by obtaining the writ of prohibition, furnished the discomfited litigant with such ample means of retaliating upon his hitherto victorious adversary, that we can hardly wonder at the frequency of the applications, sometimes just, and more often the reverse, which appear in the common law records of the times.

In these cases the prohibition was granted on the suggestion that the suit entertained in the Ecclesiastical Court was concerning *chattels which do not relate to a will or marriage* (b).

A distinction was subsequently introduced, which allowed a debtor to sue in *foro ecclesiastico*, under certain circumstances only, notwithstanding his debt might rank under the general definition before given.

The earliest author in whose pages we find an enumeration of these restricted cases is Fleta. He says, "A testator cannot by his will dispose of his actions for debt upon which he had not obtained judgment in his lifetime. If, however, he had so obtained judgment on them, they are to be considered *in bonis testatoris*, and belong to the executors *in foro ecclesiastico*. The mere right of action he has no power to dispose of, and it consequently accrues to the next of kin, to whom it is competent to institute the necessary proceedings *in foro seculari*" (c).

(b) Abbreviatio Placitorum, vol. 5, p. 107, 25 Hen. III. and *passim*. "Catalla quæ non sunt de testamento vel matrimonio."

(c) Fleta, lib. 2, c. 57, p. 126, edit. 1685. "Testator autem actiones suas legare non potest, eo quod actiones debitorum non

fuerint cognitæ neque convictæ in vitæ testatoris, sed hujusmodi actiones competunt hæredibus. Cum autem convictæ fuerint vel recognitæ tunc sunt quasi in bonis testatoris, et competunt executoribus in foro ecclesiastico. Si autem competant hæredibus ut

This refinement was the prelude to the gradual decline and extinction of this portion of the jurisdiction of the Church.

The following are a few instances shewing the exercise of this jurisdiction at an early period :—

In 28th Henry III. the official of Exeter cited the Abbot of Forde, as the executor of Robert de Courtenay, *autoritate ordinariâ*, into his court to answer to certain creditors of that deceased. The King thereupon prohibited the official, from compelling the abbot, “ad reddendum aliis creditoribus debita quæ debuit,” until he should have made payment of a debt which the deceased owed to the King himself. The writ adds, “Nisi constiterit quod catalla prædicti Roberti, quæ sunt prædicto abbati, satisfaciant ad solutionem aliorum et nostrorum” (*d*).

In 42 Henry III. a like prohibition was granted against the archdeacon and the official of York, “Ne fratrem Gilbertum de Leyseton monachum et alios executores testamenti Walteri de Leyseton, quondam vice comitis Lincolnæ vexent occasione bonorum dicti Willielmi, neque de eisdem bonis placitum in curia Christianitatis teneant, quousque per ipsos executores Regi fuerit satisfactum de debitis quæ Regi debuit” (*e*).

This jurisdiction endured for some time, for we find in 1319, in the articles of agreement between the Archbishop of Canterbury and the Bishop of Lincoln, that it still existed as an essential and ordinary incident of

prædictum est in foro seculari debent terminari, quia antequam convincantur, et in foro debito non pertinet ad executores ut in foro ecclesiastico convincantur.”

(*d*) Madox's History and An-

tiquities of the Exchequer of the Kings of England, p. 663, edit. 1711. Ex memor. 28 Hen. III. Rot. 4, b. chap 23.

(*e*) Ib. Ex. Memor. 42 Hen. III. Rot. 14, a.

the general ecclesiastical judicature. The Bishop of Lincoln asserted a claim for "*cognitiones causarum quæ per creditores, vel legatarios, vel quoscunque alios, querelantes contra executores testamentorum* hujusmodi pro bonis præcipue decedentium in sua civitate vel diocesi existentibus." But the exclusion of the testamentary executor from the common law courts began at length to be gradually relaxed. In Fleta's time, viz., probably about the beginning of the reign of Edward III. his representative character had already been recognised there in some instances. He says, "*Permissum est tamen quod executores agant ad solutionem in foro seculari aliquando*" (e).

But even when the immediate executor was placed upon the same footing that he stands on at the present time, the executor of an executor was not permitted to sue or be sued in the King's Court until 1352. (25 Edw. III.) The latter was then put in a similar position, in regard to all questions concerning the estate of the remote testator, and in 1357 (31 Edw. III.) the administrator or executor dative had the same advantages and responsibilities "*en la Court du Roi*," extended to him also.

After these enactments, it appears to have become a rule that the Ecclesiastical Court should not try a debt of any nature, and that as the subject could obtain his remedy at common law, he had, therefore, no right to proceed for relief in the ecclesiastical form, and accordingly prohibitions were awarded on that suggestion alone, without any further question or demur.

But even so late as the reign of Henry the Fifth, we find, by a complaint of the Commons, that the Eccle-

(e) Fleta, p. 126, as before.

siastical Court still endeavoured, as of old, to exercise this partial jurisdiction over matters of debt, though scarcely with the good-will or for the benefit of the nation, if we may give full credence to the querulous statements of its representatives in Parliament.

The consistent and persevering practice, however, which this petition shows, may lead one to suppose that the Ecclesiastical Courts were not at all willing to relinquish this branch of their ancient judicature, nor, as long as resistance could avail, to succumb to the attacks of their common-law rivals, on a point of authority which they had in all former ages possessed in perfect and unmolested tranquillity as an undoubted incident of their administrative power, and which, though gradually overruled by the judges, had, moreover, never been expressly repealed by any act of the Legislature.

The petition or bill to which we allude was presented by the Commons in the second year of the reign of Henry V. (1414), and sets forth "that divers liege subjects of the King are, from one day to another, cited into the Courts Christian to answer to divers persons as well of things touching frank tenement, debt, trespass, covenant, and others of which the conusance belongs to the Court of the King, as of matrimony and testament" (f).

(f) Rotuli Parliamentorum, vol. 4, p. 18, No. 5, "Item prient les communes q' come diverses lieges N're S'r le Roi sont citees de jour en autre, d'apparoir en Court Christienne devaxnt juges espritue, a y respondre as diverses personnes si bien des choses q' touchant franc

tenement, dette, trespasses, covenants et autres des queux la conusance appartient al Court N're S'r le Roi, come de matrimonie et testament, et quant tieux personnes issint citees appiergent et demandent un libel de ceo que lour est surmys," &c. &c.

This jurisdiction appears to have soon after died a natural death, for in 1443, (the date of the commission of Alexander Prowett,) we find no reference whatever made to it.

On the Continent, the authority of the Ecclesiastical Court was made ancillary to the recovery of an ordinary debt in a manner which does not appear at any time to have been ventured upon in this country. On the neglect or refusal of the debtor to satisfy the demand of his creditor, the latter applied to the court of the bishop of the diocese, who forthwith entertained the suit on a new and entirely different principle (*g*); viz., by viewing the non-payment of the debt as a constructive breach of conscience or morality. The court accordingly, considering its jurisdiction well founded on this latter ground, first monished the debtor to comply with the demand in question if justice required it, and on his contumaciously persisting in his former refusal, proceeded to fulminate its spiritual terrors in the usual manner upon the recusant, who would then, without farther discussion, after the lapse of forty days from the sentence of excommunication, be attached by the powers of the secular arm and detained in confinement till his contempt were fully absolved, which could only be accomplished by a due discharge of the principal claim and all its consequential expenses.

We have no evidence to show that this sideway of prosecuting an individual in the Ecclesiastical Court,

(*g*) Ducange, sub voce Excom- de Senevilla propter pecuniam  
mun. Decret. Greg. IX., lib. 9, quam debebat, vinculo fuisset  
tit. 3, c. 24. "Ad aures nostres excommunicationis adstrictus cre-  
pervenisse noveris quod cum C. ditoribus satisfecerit," &c. &c.



for a debt of a purely secular nature, ever prevailed, or was even attempted in this country.

Yet a nearly analogous process was certainly established here, by which the performance of a sworn contract or engagement which one of the parties had omitted to fulfil, was compelled under the form of suit for perjury, or *lesio fidei*, ostensibly instituted for the moral punishment only of the offender.

Much of the equity of the modern Court of Chancery, was at first administered by the Ecclesiastical Consistories; and in many cases it should seem to have been not merely the result of a concurrency of jurisdiction, but to have been the subject matter of the Ecclesiastical Tribunal alone, the equity of which was then of a wider range and more extended powers than it has now long since possessed or asserted.

In the infancy of the Court of Chancery, a complete equitable jurisdiction, on a variety of matters, was for want of an opposing claimant vested in the Ecclesiastical Courts, from which, on the rise of the former into more general power and utility, it was at length transferred, until in modern times but scanty traces of it are found to exist.

The term *lesio fidei*, the foundation upon which this ample jurisdiction reposed, was sufficiently comprehensive to embrace all breaches of conscience, which accordingly, of whatever quality or degree they might be, were combated or relieved by the equity of the Courts Christian.

The necessity for the existence of such a tribunal will require no apology in these days, when it is so well known that the common law, from its more confined and

literal character, has neither the power nor the inclination, in certain cases, to afford to the suitor a due remedy for his grievance.

The ecclesiastical judge therefore claimed a jurisdiction in all cases of oath and solemn promise on all occasions, or what in common equity assimilates thereto, a promise of any nature, obtained without extortion and resting on mutually fair and just considerations.

Lyndewode gives us a lucid statement of the mode of proceeding in the cause of *lesio fidei*, in order to avoid the obstacle of prohibitions, which in his time began to assail it.

A. libels B. that the latter by interposition of his faith, or by his oath in some other manner, promised and bound himself to A. that on such a day he would pay, &c., but afterwards *minus canonice* refused to fulfil his promise, in violation of his oath which by the divine and canon laws he is bound to perform under pain of mortal sin, wherefore the complainant prays that on proof of the fact the judge will decree and compel the defendant to observe his promise and engagement, by means of canonical censures.

By this method of proceeding the complainant not only obtained the infliction of a suitable penance upon his opponent for the sin which he had committed, but also a civil remedy, of a more gratifying kind, in the compulsory fulfilment of his promise or obligation; satisfaction of the wrong being, according to the canons

(h) Lyndewode, lib. 5, tit. 15, de pœnis. It was some time called *fidei transgressio* (id.) and also *interpositio fidei*. Ducange sub voce *Curia Christianitatis*. Where an

oath had been taken by the defendant, the cause was more properly styled one of perjury, but the terms were frequently, if not generally, confounded.

of the Church, a necessary and essential accompaniment of penance (i).

On this broad suggestion of breach of faith, the ecclesiastical judges also exercised the power of revising all *unconscionable* contracts and transactions, although otherwise in no way connected with the jurisdiction of the Church (k).

We have a record of suit of this nature, which occurred in the second year of the reign of King John. The circumstances which attended it were as follows:—Eberard of Binetrie, having made an extortionate bargain or rather an unfair exchange of an estate with his brother Herbert, the latter on discovering the cheat forthwith instituted a suit *pro læsione fidei* in the Court Christian, to compel a restoration of the land in question, or at least to recover a fair and equitable compensation for it. Though the other party obtained a prohibition on the usual suggestion that the Ecclesiastical Court had to his prejudice entertained a suit “*de laico feodo suo*,” the courts of common law refused to interfere, and the suit in the Ecclesiastical Court was allowed to proceed without further interruption or cessation.

In the same manner, in the 25th year of the reign of Henry III., Master Adam of Kaukeberg impleaded William the Chaplain of Newton in the Court Chris-

(i) This suit to obtain a debt was afterwards totally prohibited. See Year Book, 22 Edw. 4, 206, Wright v. Wright, (Gwillim on Tithes, p. 169.) “If I owe one £10, and swear to pay him by a certain day, and upon that he sues me in the Spiritual Court, *pro læsione fidei*, a prohibition lies, for he may have an action of debt against me for this, at common law.”

(k) Placit. abbrev. Rot. 21, 2 Joh. Eborardus de Binetrie queritur quod Herebertus frater ejus traxit eum in placitum in curia Christianitatis de laico feodo suo contra prohibitionem Justic &c. Herebertus dixit quod implacitavit eum super læsionem fidei suæ de quodam escambio terræ quam Eberardus ei abstulit. Dies datus et interim remaneat placitum in Curia Christianitatis.

tian on the ground of his having violated a certain composition or agreement formerly made between them, by which he, the plaintiff, was damnified to the extent of twenty marks (*l*).

This suit, the precise nature of which does not appear, beyond the circumstance of its being with a view of obtaining a compensation for damages, was afterwards prohibited on some special grounds, and an action was then brought by the chaplain for the same purposes at common law.

There is a peculiarity in the constitution of the Ecclesiastical Courts, which deserves some further remarks before I end this sketch, viz. their liability to be corrected by prohibitions from Her Majesty's Courts on any occasion of their overstepping the boundary of the jurisdiction assigned to them by law. This power was expressly reserved to the Crown by the ordinance of William I. (*m*).

The Ecclesiastical and Secular Jurisdictions, at the present time, so well understand the extent of their respective provinces, that an interference of the latter with the other is of extremely rare occurrence.

In early times the case was widely different; and the royal prohibition was a wholesome and necessary remedy against the excesses and dangerous caprices often exhibited by the Courts Christian in refining on the broad and general principles of the law which they inculcated.

As a proof that almost any thing may be construed into a breach of the morality of which those courts have ever been the authorised guardians and vindicators, the follow-

(*l*) Placit, abbrev. vol. 14, p. 108, 25 Hen. 3. laicus homo alium hominem, sine justitia, episcopi ad judicium adducat.  
 (*m*) In the words nec aliquis ducat.

ing is an instance in point. In 7 Edward I., Master Robert Picheford having failed in an action at common law, the chagrin and dissatisfaction which he naturally felt at his defeat, prompted him to the ingenious proceeding of a suit for defamation in the Ecclesiastical Court against the majority (*plurimi*) of the jurors who had returned the verdict which, as he thought, had cast a slur and reproach upon his character (*n*).

We have no means of knowing whether the ecclesiastical judge would have promulged a sentence in his favour, for all further proceedings were estopped at an early stage of the suit by a prohibition, and an action at common law was then, in turn, commenced by the jurymen, who recovered damages against the plaintiff in the former cause of defamation.

But the facility of obtaining prohibitions exposed the Church and her ministers to many inconveniences, and the suitors to much injury, the result of the misrepresentation or falsehood of the suggestions on which they were frequently obtained (*o*). When Humphrey, the Archdeacon of Dorset (in 25 Hen. 3), cited William of Coleville into his consistory, to answer a charge of adulterous conversation, the latter contumaciously absented himself, for which the ordinary at first suspended him *ab ingressu ecclesie*, and finally pronounced a sentence of excommunication. But the delinquent was able for a time to elude the reach of justice, by procuring the archdeacon to be prohibited from proceeding further in the suit, on the pretence that he was

(*n*) Abbrev. plac. p. 270, rot. 8, 7 Edw. 1. "Eos implacitavit pro eo quod ipsum diffamaverunt."

(*o*) Abbrev. placit, rot. 13 in dorso, 25 Hen. 3.

holding a plea "*de rapto et de pace domini regis infracta*" (p).

Another usual pretence, when a suit for tithes had been instituted by the impoverished incumbent, in the court of the bishop, was for the adverse party to suggest that the ecclesiastical ordinary proceeded "*de laico feodo*," or in the matter of a lay fee.

In the reign of Henry the Third, these prohibitions, from their frequency and number, trenched so materially on the autonomy and the spiritual jurisdiction of the Church, as to alarm the fears or excite the indignation of the heads of the English Church. In fact, the abuse had increased to so considerable an extent that even the existence of the consistories appeared endangered; but, fortunately for the Church, the primacy of Canterbury was then wielded by a prelate of stubborn and uncompromising principles. Boniface, the archbishop, was a man, from temper and constitution, pre-eminently adapted to meet the turbulent spirit of the time, as one who was neither disinclined nor afraid to counteract an evil by the application of a remedy equally severe. In 1260 he convened a provincial synod, at which the general grievances of the Church were fully discussed. The assembled clergy, urged by the example of their resolute metropolitan, determined on a penal enactment, which, to modern notions, can hardly appear in any other light than that of extreme temerity or arrogance (q); but if we regard the fallen and desperate state of the Ecclesiastical Jurisdiction, it was in all probability the safest and

(p) Abbrev. Placit, rot. 5, p. 106, and passim.

(q) Lyndewode, lib. 5, c. 15, de pœnis.

most prudent course of policy which it was then in their power to adopt.

The various causes in which prohibitions were obtained on fictitious representations or suggestions are thus enumerated in the constitution passed at this council, viz. :—the admission of clergymen to vacant churches or chapels ; the institution of rectors ; the excommunication or interdiction of the clergy by their prelates ; the dedication of churches ; the celebration of orders ; questions respecting tithes, oblations, or the boundaries of a parish ; perjury, transgression of faith, sacrilege, the violation or perturbation of the liberties of the Church, especially of those which were guaranteed by the royal charters ; personal suits, or actions of any nature between clerks and laymen. The fines and distresses levied upon the bishops, in the event of any contumacy or default of their inferior clergy, for whom the law considered them responsible, wound up this series of complaints.

The antidote to all these evils, proposed by the metropolitan and his suffragans, and confirmed by the representative body of the provincial clergy, was as harsh as the necessities of the case seemed to demand. The decrees of the council commenced by providing that thenceforth no archbishop, bishop, or prelate, when summoned on merely spiritual matters, should attend or obey the mandate of a secular judge, to whom no authority was given to adjudicate over the Lord's anointed ; but, to save the king's honour, it was unanimously agreed that, whenever this occurred, the prelate who was most intimately concerned in the transaction should respectfully inform the king in writing that he could not consistently, or without danger to

his order, obey the mandate, which had issued in the royal name.

The council then proceeded to make a sharp provision against another evil of a glaring and oppressive character, viz., the practice of giving a fictitious description of the merits of a question, in order to obtain a prohibition. "If, perchance, the king, in his attachments, prohibitions, or writs of summons, shall have made mention, not of tithes, right of patronage, belied faith, or perjury, but of chattels; not of sacrilege, or disturbance of the liberties of the Church, but of trespasses of her dependants and bailiffs (whose correction he asserts to appertain to himself); then, in such cases, the aforesaid prelates shall intimate to him that the suits which they are taking cognizance of are not of patronage, chattels, or matters appertaining to his forum, but of tithes, sin, and other matters merely spiritual, and appertaining to their office and jurisdiction, and to the health of souls, and shall admonish and entreat him to desist from obstructing them in the premises."

The bishop whose authority had been infringed was required by the council to address, in person, a further admonition to the monarch, and if this failed of its proposed effect, the archbishop of the province, on receiving the information from his suffragan, with the assistance of two or more other bishops, or the Bishop of London with a like number of his brethren, should visit the king for the purpose of giving a still further and peremptory monition; and if the latter, in spite of these remonstrances, still persisted in refusing to interfere or discharge the attachments and processes complained of, a decree of excommunication and suspension should be issued by all the diocesans in whose jurisdic-



tion the sheriffs by whom the obnoxious law was enforced should reside or hold property. If the sheriffs persevered in their course, their residences or estates were to be subjected to a strict and effective interdict.

Even here ecclesiastical boldness did not stop. In conclusion, the council made a further provision in case the king should not command the obnoxious process to be stayed. The bishops and clergy at large were directed to lay even the boroughs and demesnes of majesty itself under the same extensive sentence; and if this penultimate proceeding was of no avail, all the dioceses of the province of Canterbury were to be involved in one general doom of excommunication.

The extraordinary audacity of this synod was well calculated to strike terror and dismay into the heart of a very large portion of the nation, who saw, in a suppression of the rites of religion, the hopes of heaven held out to them by spiritual aid entirely annihilated for an indefinite period of time, through the captious quarrels of the lay tribunals.

Whatever effect the decrees of this council may have had in softening or allaying the evil complained of, it is, nevertheless, undoubtedly true that the contest for jurisdiction continued, in some form or direction, throughout the reign of every succeeding monarch, until the time of Charles the First, though never to the extent to which it appears to have been carried during the period I have before described; for the disturbed state of the kingdom during the reign of Henry the Third, combined with his own imbecility and want of energy, had produced so many abuses in the general practice and administration of the law, that the easy and groundless procurement of prohibitions formed but

an item in a long list, although its effect upon the Church, in enabling her enemies to evade her censures, or openly assault her judicial constitution, with perfect and unlimited impunity, was in the highest degree destructive to her legitimate interests and powers.

The Ecclesiastical Jurisdiction still remains, substantially, in the same condition as I have described it; it has weathered the malignant attacks of the puritans of one age and the reforming dissenters of another, and exhibits no symptom of decay.

The above remarks are intended merely as a brief description of the rise and progress of the Ecclesiastical Courts, and have accordingly been confined to the more striking and curious features which they have exhibited, either in their origin, or in their subsequent extension and development. As their vicissitudes of jurisdiction ended with the periods I have severally referred to, their fortunes, in the succeeding ages, exhibit little to interest the reader, and I, therefore, now conclude my sketch.

## THE ECCLESIASTICAL JURISDICTION AND ITS DIVISIONS.

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As regards the scheme of Ecclesiastical Jurisdiction, England is separated into the two provinces of the Archbishops of Canterbury and York, and these again, for the purposes of immediate control, are subdivided into the dioceses of the respective bishops of the Established Church. In addition to the latter, there are also the jurisdictions of the deans and chapters of the cathedral churches, and of the archdeacons, besides the peculiars, which admit of no regular classification. The matter of the Ecclesiastical Jurisdiction, which is the subject of this compilation, belongs, in all its branches, in the first instance, to the consistorial courts of the archbishops and bishops. The Prerogative Court of the Archbishop of Canterbury is confined to the testamentary questions of the province, and the Arches' Court of Canterbury is only appellate.

The courts of the deans and chapters have exclusive jurisdiction over matrimonial suits arising within their precinct, but now interfere with little else.

From the Arches and Prerogative Courts of Canterbury, as also from the corresponding courts of the province of York, the appeal lies to Her Majesty the Queen in Council.

## THE PRACTICE OF THE ECCLESIASTICAL COURTS.

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AGREEABLY to the scheme adopted in the introduction, I commence with

### CRIMINAL SUITS.

Criminal suits, as instituted in the Ecclesiastical Courts, are proceedings to punish and reclaim a sinful offender, by judicial admonition or an infliction of the severer censures of the Church. They purport to be brought *pro salute animæ*, and are directed to the reformation of his manners and excesses.

These suits are divisible into two classes, viz., those instituted against clergymen for a breach of the discipline of the Church, and those against laymen for any offence against morality involving a public scandal and evil example.

Any individual has a competent interest to institute a suit in this form, the object not being conducive to any private end or advantage, but being solely applied *ad publicam vindictam*, to correct an abuse of which all persons have a right to complain; it corresponds, therefore, with an indictment at common law.

*Against Clerks.*

I propose to begin with the subject of proceedings against clerks of the United Church of England and Ireland, for the enforcement of its peculiar discipline. These suits, as regards the form in which they are brought, have received a very considerable modification and change under the provisions of 3 and 4 Vict., c. 86, intituled "An Act for better enforcing Church Discipline."

The following is a brief summary of the provisions of that act :—

Whenever a clerk in holy orders, of the Church of England and Ireland, shall be charged with any offence against the ecclesiastical laws, or there may exist scandal or evil report concerning him, as having so offended, the bishop of the diocese within which the offence is alleged or reported to have been committed, is empowered, on the application of any party complaining thereof, or, if he shall think fit, of his own mere motion, to issue a commission under his hand and seal, directed to five persons, of whom one shall be his vicar-general, or an archdeacon, or rural dean, within his diocese, for the purpose of making inquiry as to the grounds of such charge or report. Commission of inquiry.

Notice of the intention to issue such commission, under the hand of the bishop, and containing an intimation of the nature of the offence, together with the names, addition, and residence of the party on whose application or motion such commission shall be about to issue, is to be sent by the bishop to the party Notice thereof.

accused, fourteen days at least before such commission shall issue.

Proceedings  
of commis-  
sioners.

The proceedings of the commissioners are regulated in the following manner :—They, or any three of them, shall examine, upon oath, or solemn affirmation, or declaration, as the case may be, and which oath, or affirmation, or declaration shall be administered by them to all witnesses who shall be tendered to them for examination, as well by the party alleging the truth of the charge or report, as by the party accused, and to all witnesses whom they may deem it necessary to summon, for the purpose of fully prosecuting the inquiry, and ascertaining whether there be sufficient *prima facie* ground for instituting further proceedings.

Notice of the  
meeting of the  
commission-  
ers.

Notice of the time and place when and where every such meeting of the commissioners shall be holden is to be given in writing under the hand of one of such commissioners to the party accused, seven days at least before the meeting. And the party accused, or his agent, may attend the proceedings of the commission and examine the witnesses.

All these preliminary proceedings are to be public, unless, on the special application of the party accused, the commissioners shall direct that the same, or any part thereof, shall be private. And at the closing of these proceedings, whether public or private, one of the commissioners shall, after due consideration of the depositions taken before them, openly and publicly declare the opinion of the majority of the commissioners present at such inquiry, whether there be or be not sufficient *prima facie* ground for instituting further proceedings.

The next step to be taken by the commissioners is as follows :—They, or any three of them, are to transmit to the bishop under their hands and seals the depositions of the witnesses taken before them, and also a report of the opinion of the majority of them, whether or not there be sufficient *prima facie* ground for instituting further proceedings. Commissioners' report.

The report is to be filed in the registry of the diocese, and if the party accused shall hold any preferment in any other diocese or dioceses, the bishop to whom the report is made shall transmit a copy thereof and of the depositions to the bishop or bishops of such other diocese or dioceses, and shall also, upon the application of the party accused, cause to be delivered to him a copy of the report and depositions, on payment of a reasonable sum for the same.

After this stage of proceedings has been arrived at, the act empowers the bishop of any diocese within which the party accused may hold any preferment, with the consent of such party, and of the accuser, if any, in writing, to pronounce, without any further proceedings, such sentence as he shall think fit, not exceeding the sentence which might be pronounced in due course of law. Sentence of the bishop by consent.

If the commissioners have reported that there is sufficient *prima facie* ground for instituting proceedings, and if the bishop of any diocese within which the party accused may hold any preferment, or the party complaining shall thereupon think fit to proceed against the party accused, *articles* shall be drawn up, and when approved and signed by an advocate practising in Doctors Commons, shall, together with a copy of the depositions taken by the commissioners, be filed in the Articles.

registry of the diocese of such last-mentioned bishop ; and any such party or any person on his behalf shall be entitled to inspect without fee such copies, and to require and have on demand from the registrar copies of such depositions, on payment of a reasonable sum for the same.

Service thereof.

A copy of these articles when so filed shall be forthwith served upon the party accused by personally delivering the same to him or by leaving them at the residence-house belonging to any preferment holden by him, or if there be no such house, then at his usual or last known place of residence. And the articles are not to be proceeded upon until after the expiration of fourteen days from the day on which the copy has been served.

Notice to answer the articles.

The bishop is also empowered, by writing under his hand, to require the party to appear either in person or by his agent duly appointed, before him, at any place within the diocese, and at any time after the expiration of the fourteen days, to make answer to the articles within such time as to the bishop shall seem reasonable. And if the party shall appear, and by his answer admit the truth of the articles, the bishop or his commissary, specially appointed for that purpose, shall forthwith proceed to pronounce sentence according to the ecclesiastical law.

Service of notices.

All notices are to be served in the same manner, as is directed in regard to the copy of the articles.

Sentence of the bishop.

If the party accused shall refuse or neglect to appear and make answer to the articles, or shall appear and make any answer other than an unqualified admission of their truth, the bishop is empowered to proceed to hear the cause, with the assistance of three assessors,



one of whom shall be an advocate who shall have practised not less than five years in the court of the archbishop of the province, or a serjeant-at-law, or a barrister of not less than seven years standing, and another shall be the dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons or his chancellor.

On the hearing of the cause, the bishop determines and pronounces sentence thereupon, according to the ecclesiastical law.

Every sentence, whether pronounced by the bishop or his commissary, is enforced by the like means as a sentence pronounced by an ecclesiastical court of competent jurisdiction.

If, however, the bishop of the diocese within which the clerk shall hold any preferment, or if he hold no preferment, the bishop of the diocese within which the offence is alleged to have been committed shall think fit either in the first instance, or after the commissioners have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, he may send the case by letters of request to the court of appeal of the province, to be there heard and determined, according to the law and practice of such court.

No appeal is allowed from any interlocutory decree or order, not having the force or effect of a definitive sentence, save by the permission of the judge of such court.

The appeal from the sentence lies to the archbishop, and shall be heard before the judge of the court of appeal of the province, and from his judgment there lies a further appeal to the Queen in Council.

**Limitation of suits.** Every suit against a clergyman for any offence against the ecclesiastical laws must be commenced within two years after the commission of the offence in question.

But where proceedings are brought in respect of an offence for which a conviction has been obtained at common law, the suit may then be commenced against the person convicted at any time within six calendar months after such conviction, although more than two years shall have elapsed since the commission of the offence.

Before proceeding to explain the practice more particularly, I will first recapitulate the general cases in which articles are exhibited against clergymen for the several purposes of admonition, suspension, or deprivation.

The offences for which a clergyman becomes amenable to the censures of an ecclesiastical tribunal, may be classed under the following general heads, viz:—Neglect of his pastoral functions, violation of the obligations and duties of his sacred office, and disobedience or contumacy towards his ecclesiastical superiors. And they may again with a greater degree of particularity be enumerated as follows, the censure or punishment usually consequent upon them being at the same time distinguished.

#### *Crimes.*

Profligate life and conversation, adultery, fornication, and incontinence.

#### *Censures.*

Suspension *ab officio et beneficio* for three years(a), deprivation and suspension *ab officio* (b).

(a) *Watson v. Thorp.* Phil. 1, p. 270, *Pawlett v. Head*, Sir Geo. Lee, 2, p. 565. *Trower v. Hurst*, East. Term, 1846, Arches.

(b) *Burgoyne v. Free.* Add. 2, p. 414. *Hagg* 2, p. 456. *Kitson v. Loftus*, Mich. Term, 1845, Arches.

Sodomitical practices (c).

Deprivation, or inhibition from the performance of clerical functions.

Drunkenness, (habitual,) and accompanied by profaneness, obscenity of language, &c. (d)

Suspension *ab officio et beneficio* for three years.

Ditto not aggravated by other circumstances (e).

Suspension *ab officio* for a less term.

Brawling in a church or churchyard, (by words only,) (f).

Under the general law, admonition or suspension *ab officio*, by 5 & 6 Edw. 6, c. 4, suspension.

Smiting or laying violent hands on any person in a church or churchyard.

By the before mentioned statute and 53 Geo. 3, c. 127, s. 3, excommunication, i. e. an imprisonment for any term not exceeding six months.

Advisedly maintaining or affirming doctrine directly contrary or repugnant to the articles of religion as by law esta-

Deprivation and inhibition from the performance of clerical functions.

(c) *Ellenthorne v. Myers and Moss*, Deleg. 1773. *Burder v. —*, Curt. 3, p. 822. *Clarke v. Heathcote*, Mich. Term. 1845, Arches.

(d) *Saunders v. Davies*, Add. 1, p. 291. (for three years.) *Burder v. Speer*, Trin. Term, 1841, Arches (for do.) *Burder v. Jenkins*, Trin. Term, 1838, Arches (for do.) *Bishop of Lincoln v. Day*, Mich. Term,

1845, Arches (for do.) *Brookes v. Cresswell*, Hil. Term, 1846, Arches (for eighteen months in addition to a suspension immediately preceding for the same period.)

(e) *Rowland v. Jones*, Sir Geo. Lees, R. 2, p. 191, for a twelve-month.

(f) *Cox v. Goodday*, Hagg. C. R. 2, p. 138, suspended *ab officio* for a fortnight.

blished, and against the statute 13 Eliz. c. 12, (an act for the ministers of the church to be of sound religion,) (*g*).

Neglect of duty (*h*).

Refusal to bury the body or baptize the child of a parishioner (*i*).

Irregularities in reading the holy Scriptures, and varying the service from the prescribed form.

Irregularity and indecorum in the performance of divine offices (*k*).

Publishing the bans of marriage between persons not being parishioners, and marrying such persons (*m*).

Non-residence (*n*).

Suspension *ab officio et beneficio*, or *ab officio* merely.

Suspension *ab officio*, for three months, (68<sup>th</sup> Canon, 1603.)

Suspension *ab officio*.

Ditto.

Suspension *ab officio*, for three years, (62<sup>nd</sup> Canon).

Suspension *ab officio et beneficio* or deprivation.

(*g*) Bishop v. Stone, Hagg. C. R. 1, pp. 424, 434. Saunders v. Head, Curteis 3, p. 565. Hodgson v. Oakely, Trin. Term. 1846, Arches.

(*h*) Argar v. Holdsworth, Lee, 2, p. 515. Bennett v. Bonaker, Hagg. 3, p. 24.

(*i*) Robinson v. Hutchinson and Hutchinson, Deleg. 1776. Kemp v. Wickes, Phil. 3,

p. 300. Mastin v. Escott, Curteis 2, p. 692. Titmarsh v. Chapman, Curt. 3, p. 703.

(*k*) Newbery v. Goodwin, Phill. 1, p. 282, suspension *ab officio* for a fortnight.

(*m*) Wynn v. Davies and Weaver, Curt 1, p. 69.

(*n*) Pawlet v. Head, Lee, 2, p. 565. Davis v. Pope, Deleg. 1794.

Officiating out of his diocese ( <i>o</i> ).	Admonition under 48 <sup>th</sup> Canon.
Performing divine service without a license from the ordinary ( <i>p</i> ).	Suspension <i>ab officio</i> , or admonition.
Ditto by a license surreptitiously obtained ( <i>q</i> ).	Revocation of license.
Ditto after revocation of a license by the ordinary ( <i>r</i> ).	Admonition.
Evil practices in obtaining orders, institution, &c. by procuring another to undergo a vicarious examination, &c. ( <i>s</i> ).	Suspension <i>ab officio et beneficio</i> .
Simony ( <i>t</i> ).	Deprivation.
For disrespectful and disobedient conduct towards the ordinary ( <i>u</i> ).	Admonition.

The following forms will illustrate the proceedings taken under the act of parliament, in the several cases where the party complaining, and the clerk shall have consented to sentence being pronounced by the bishop himself, without further proceedings, and also where no such consent has been given.

(*o*) *Gates v. Chambers*, Add. 2, p. 177.

(*p*) *Smith v. Lovegrove*, Lee, 2, p. 172. *Keith v. Trebeck* Deleg. 1742. *Hodgson v. Dillon*, Cons. of London, East. Term, 1846.

(*q*) *Duke of Portland v. Bingham*, Hagg. C. R. p. 157.

(*r*) *Hodgson v. Dillon*, Curt. 2, p. 388.

(*s*) *Bishop of London v. Havers*, 1678, Arches and Delegates.

(*t*) *Dobic v. Masters*, Phill. 3, p. 171.

(*u*) *Taylor v. Morley*, Curt. 1, p. 470.

*Notice of Intention to issue a Commission.*

Charles James, by Divine permission, Bishop of London,  
to the Honourable and Reverend Frederic Smyth  
Monckton, Clerk, Minister of the New Church of  
Saint Peter de Beauvoir Town, in the parish of  
West Hackney, in the county of Middlesex, and  
within our diocese and jurisdiction.

Whereas application has been made to us under an  
act of Parliament made and passed in the session of  
Parliament held in the 3rd and 4th years of the reign  
of her present Majesty, entitled "An Act for better  
enforcing Church Discipline," by George Sheldrick,  
Clerk to the Inspector-General of Her Majesty's  
Customs, of No. 12, Hertford Cottages, Hertford  
Road, Kingsland Road, in the county of Middlesex,  
and within our diocese, that we would issue a com-  
mission, under our hand and seal, for the purpose of  
making inquiry as to the grounds of certain charges  
which he, the said George Sheldrick, is prepared to  
bring against you, the said F. S. Monckton, that you  
have offended against the laws ecclesiastical, by having  
been guilty of the foul crime of fornication and having  
taken indecent liberties with divers women within two  
years from the date hereof, and also with having been,  
upon divers occasions within the said period, in a state  
of intoxication, and otherwise misconducted yourself,  
whereby you have brought great scandal on the Church;  
we therefore do hereby give you notice that, by virtue  
and in pursuance of the said recited act, it is our inten-  
tion, after the expiration of fourteen days at least from  
the service hereof, to issue a commission under our

hand and seal to the five persons hereinafter-mentioned, that is to say,—The Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General; the Venerable John Sinclair, Clerk, Archdeacon of the Archdeaconary of Middlesex, in our diocese of London; the Reverend Richard Harvey, Clerk, Rector of the parish church of Hornsey, in the county of Middlesex, and our diocese of London, and a Rural Dean within our said diocese; the Reverend John Russell, D.D., Rector of the parish church of Saint Botolph, Bishopgate, in the city and diocese of London; and the Reverend William Stone, Clerk, Rector of the parish church of Christ Church, Spitalfields, in the county of Middlesex, and diocese of London; for the purpose of making inquiry as to the ground of such charges.

Given under our hand at London House, the 18th day of February, in the year of our Lord, 1845, and in the 17th year of our translation.

C. J. LONDON.

### *Commission.*

Charles James, by Divine permission, Bishop of London, to our beloved in Christ, the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General; the Venerable John Sinclair, Archdeacon of the Archdeaconry of Middlesex, in our diocese of London; the Rev. Richard Harvey, Clerk, Rector of the Parish Church of Hornsey in the County of Middlesex and our Diocese of London, a Rural Dean within our said diocese; the Reverend John Russel, Doctor in Divinity, Rector of the Parish Church of Saint Botolph, Bishopsgate, in the said

City of London and our Diocese of London, and the Reverend William Stone, Clerk, Rector of the Parish Church of Christ Church, Spitalfields, in the said County of Middlesex and our Diocese of London.

Greeting—whereas application hath been made to us under an act of Parliament made and passed in the session of Parliament held in the third and fourth years of the reign of Her present Majesty, entitled “An Act for better enforcing Church Discipline,” by George Sheldrick, of No. 12, Hertford Cottages, Hertford Road, Kingsland, in the county of Middlesex, and our diocese of London, Clerk to the Inspector-General of Her Majesty’s Customs, to issue our commission for the purpose of making inquiry as to the grounds of certain charges which he the said G. Sheldrick is prepared to bring against the Honourable and Reverend F. S. Monckton, a Clerk in holy orders of the united Church of England and Ireland, and Minister or perpetual Curate of the perpetual Curacy, or Church of Saint Peter, otherwise Saint Peter de Beauvoir Town, in the parish of West Hackney in the said county of Middlesex and our diocese of London, and which charges are that he the said F. S. Monckton hath offended against the laws ecclesiastical, by having within two years last past, and within our said diocese of London, been guilty of the foul crime of fornication, and having during the said period, and within our said diocese of London, taken indecent liberties with divers women, and also by having been upon divers occasions within the said period, and within our said diocese, in a state of intoxication, and also by having within the said period, and within our said diocese, otherwise mis-



conducted himself, and that he has thereby brought great scandal on the Church: And whereas in pursuance of the said act we as the bishop of the diocese within which the said offences are alleged or reported to have been committed, did on the 12th day of February, in the present year, 1845, being fourteen days and upwards before the issuing of this commission, send a notice to the said F. S. Monckton, of our intention to issue these presents, and which notice was duly delivered to him the said F. S. Monckton. Therefore, we Charles James, by Divine permission, Bishop of London, being as aforesaid the bishop of the diocese within which the said offences are alleged to have been committed, do, on the application of the said G. Sheldrick, and in further pursuance of the said act, issue this our commission to you the said Stephen Lushington, John Sinclair, Richard Harvey, John Russell, and William Stone, and do enjoin, authorize, and empower you, or any three of you, to make inquiry into the grounds of the said charges to be made by the said G. Sheldrick against the said F. S. Monckton, and otherwise to proceed in the execution of these presents, in the manner authorized and directed by the said act.

Given under our hand and seal at London House, the 6th day of March, in the year of our Lord 1845, and in the seventeenth year of our translation.

C. J. LONDON.

*Notice of Proceedings under the Commission.*

To the Honourable and Reverend Frederic Smyth Monckton, Clerk, Minister of the New Church of Saint Peter, otherwise Saint Peter de Beauvoir

Town in the Parish of West Hackney in the County of Middlesex and Diocese of London.

Whereas a commission has lately issued under the hand and seal of the Right Honourable and Right Reverend Charles James, by Divine permission Lord Bishop of London, in the words and to the tenor following, to wit.

“Charles James,  
(&c.) ”

Now I Stephen Lushington, one of the Commissioners in the foregoing commission mentioned, do, in pursuance of the before recited act, hereby give you notice that a meeting of the Commissioners named and appointed under the aforesaid Commission, will be holden in the Common Hall of Doctors Commons, situate in the Parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there on Friday, the 14th day of this present month of March, at 10 o'clock in the forenoon of the same day, and on such subsequent or other days and times as may be necessary, and which the said Commissioners may think proper to appoint for the purpose of making inquiry into the grounds of the said charges in the said commission mentioned, to be then and there made and brought against you the said F. S. Monckton, and otherwise to proceed in the execution of the said commission according to the terms and tenor thereof, and in the way and manner authorized and directed by the said act, and as unto law and justice shall appertain. Dated this 6th day of March, in the year of our Lord 1845.

STEPHEN LUSHINGTON.

*Report of Commissioners.*

To the Right Honourable and Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London :

We, the undersigned, being four of the commissioners appointed in and by a commission, under your lordship's hand and seal, in the words following, to wit (*reciting the commission in full*), do hereby report to your lordship, that, in pursuance of the powers given to us under and by virtue of the above-recited commission, we assembled in the Common Hall, in Doctors' Commons, London, on Friday, the 14th day of March last, on Saturday, the 15th day of the said month, on Thursday, the 27th day of the said month, and on the two following days, to execute the said commission ; that, after the said commission had been read, the said Honourable and Reverend Frederic Smyth Monckton being present, George Sheldrick, in the said commission mentioned, tendered to us, for examination, the following witnesses, who were thereupon sworn by us, as directed by the act, and examined in our presence. (*Here follow the names of the witnesses.*) That the said George Sheldrick then brought in a printed copy of an annual report of the De Beauvoir National Schools, marked with the letter A, and annexed hereto, and which said copy was admitted by the said Frederic Smyth Monckton. That we then heard counsel on behalf of the said Frederick Smyth Monckton, after which the said Frederick Smyth Monckton tendered to us for examination the following witnesses, who were thereupon sworn by us, and examined in our presence (*here follow the names of the witnesses*) ; and we after-

wards heard counsel on behalf of the said George Sheldrick.

We do further report that, after due consideration of the depositions so taken before us, and which we herewith transmit to your lordship, the evidence produced to us in support of the charges of fornication and of taking indecent liberties with divers women, is not sufficiently strong and credible to justify us in recommending further proceedings; that, on the contrary, we are of opinion that no conviction founded on the present evidence would be warranted by justice; and, for these reasons, we report that there is no *prima facie* case for further proceedings on those charges.

2d. That there is no sufficient ground for advising that further proceedings should be had on the charge of intoxication.

3d. That the conduct of the said Frederic Smyth Monckton, with regard to the females forming part of his family, and especially with respect to Sarah Huggins, and his ordinary habits of living, were degrading to a clergyman of the Church of England, and have produced great scandal in the Church; that such conduct rendered an investigation necessary, and requires us to report that there is sufficient ground for proceeding against the said Frederic Smyth Monckton on the charge of having, by his conduct and demeanour, brought great scandal on the Church.

Given under our hands and seals this 8th day of April, in the year of our Lord 1845.

STEPHEN LUSHINGTON,  
JOHN SINCLAIR,  
J. RUSSELL,  
WILLIAM STONE.

*Consent of the Party accused that Sentence be pronounced by the Bishop.*

I, the Honourable and Reverend Frederic Smyth Monckton, clerk, minister, &c., do hereby signify my consent to the Right Honourable and Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, pronouncing, without further proceeding, such sentence not exceeding that which might be pronounced in due course of law for and in respect of the charges preferred against me by George Sheldrick, and reported by the commissioners (to whom, under a commission for that purpose, from the said lord bishop, bearing date the 6th day of March, 1845, the inquiry into the grounds for such charges was referred,) as justifying further proceedings against me. In witness whereof I have hereunto set my hand, the 23d day of April, in the year of our Lord 1845.

FRED. S. MONCKTON.

*Consent of the Promoter.*

Whereas, under and by virtue of a certain Act of Parliament, made and passed in the session of Parliament held in the third and fourth years of the reign of Her present Majesty, intituled "An Act for better enforcing Church Discipline," the Right Honourable and Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, on the application of George Sheldrick, of &c., issued a commission under his the said lord bishop's hand and seal,

authorizing and requiring the commissioners therein named (one of them being his lordship's vicar-general), or any three of them, to make inquiry into the grounds of certain charges which, as alleged, he, the said George Sheldrick, was prepared to bring against the Honourable and Reverend Frederick Smyth Monckton, a clerk in holy orders, &c., of having offended against the laws ecclesiastical, by having &c.; and whereas four of the commissioners named in the said commission (one of the said four being the vicar-general of the said lord bishop) accepted the execution of the said commission, and having proceeded in and concluded their inquiry into the grounds of the said charges, in the presence of the said George Sheldrick and of the said Honourable and Reverend Frederic Smyth Monckton, have, by their report in writing, made in pursuance of the provisions of the said act, reported to the said lord bishop, "that after due consideration," &c.: and whereas the said Honourable and Reverend Frederic Smyth Monckton has signified in writing his consent to the said lord bishop pronouncing, without further proceedings, such sentence not exceeding the sentence which might be pronounced in due course of law, for and in respect of the conduct and demeanour of him the said Honourable and Reverend Frederic Smyth Monckton, reported by the said commissioners as requiring further investigation, and respecting which there was, in their opinion, sufficient ground for proceeding against him the said Honourable and Reverend Frederic Smyth Monckton, on the charge of having, by such conduct and demeanour, brought great scandal on the Church: Now I, the said George Sheldrick, do, by this writing, signify and declare my consent to such sentence being pro-

nounced, without any further proceeding. In witness whereof I have hereunto set my hand, this 16th day of May, in the year of our Lord 1845.

GEORGE SHELDRIK.

*Sentence of the Bishop by Consent.*

In the name of God, amen: whereas we, Charles James, by Divine permission, Bishop of London, having, on the application of George Sheldrick, of No. 12, Hertford Cottages, Hertford Road, Kingsland, in the county of Middlesex, clerk to the Inspector-General of Her Majesty's Customs, and under and by virtue of a certain Act of Parliament, made and passed in the session of Parliament held in the third and fourth years of the reign of Her present Majesty Queen Victoria, entitled "An Act for better enforcing Church Discipline," issued our commission under our hand and seal, authorizing and requiring the commissioners therein named, or any three of them, to make inquiry into the grounds of certain charges, which he the said George Sheldrick was prepared to bring against the Honourable and Reverend Frederic Smyth Monckton, a clerk in holy orders of the United Church of England and Ireland, and minister or perpetual curate of the perpetual curacy or church of Saint Peter de Beauvoir Town, in the parish of West Hackney, in the said county of Middlesex, and our diocese of London, it being alleged that he the said Frederic Smyth Monckton had offended against the laws ecclesiastical in divers particulars, by the said George Sheldrick set forth: and whereas we have received from four (a majority) of the said commissioners, and being all that attended, the

depositions of the witnesses taken before them under the said commission, and also a report, in writing, of their opinion that, after due consideration of the said depositions, there was no *prima facie* case for further proceedings on the other charges preferred by the said George Sheldrick, and specified in the said commission ; but that the conduct of the said Honourable and Reverend Frederic Smyth Monckton with regard to the females forming part of his family, and especially with respect to one Sarah Huggins, and his ordinary habits of living, were degrading to a clergyman of the Church of England, and had produced great scandal in the Church, and rendered an investigation necessary, and laid sufficient ground for proceeding against him the said Honourable and Reverend Frederic Smyth Monckton, on the charge of having by such conduct and demeanour brought great scandal on the Church : Now we, the said Charles James, by Divine permission, Bishop of London, having duly considered the premises, do, as the bishop of the diocese in which the said perpetual curacy or preferment of Saint Peter de Beauvoir Town is situate, and under the provisions of the said act, and with the consent of the said Honourable and Reverend Frederic Smyth Monckton and of the said George Sheldrick, signified to us in writing, pronounce, decree, and declare, that, for the conduct aforesaid, he the said Honourable and Reverend Frederic Smyth Monckton, clerk, ought to be suspended, for the space of twelve calendar months, from all discharge of the functions of his clerical office, and the execution thereof ; that is to say, from preaching the word of God, administering the sacraments, or celebrating or performing any other duties or offices in the church or perpetual curacy



of Saint Peter de Beauvoir Town, aforesaid; and we do suspend him, the said Honourable and Reverend Frederic Smyth Monckton, accordingly, and we do further expressly enjoin and command, that there be due publication made of this suspension, and do decree that such suspension of twelve calendar months shall be reckoned or computed from such publication.

C. J. LONDON.

*Summons of Witness.*

We, the undersigned, three of the commissioners duly appointed by and acting under a commission from the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, bearing date the sixth day of March, in the present year 1845, and (in virtue of the provisions of a certain Act of Parliament, made and passed in the session of Parliament held in the third and fourth years of the reign of Her present Majesty Queen Victoria, intituled "An Act for better enforcing Church Discipline,") duly issued, for the purpose of making inquiry, and authorizing us and others the commissioners named in the said commission to make inquiry, as to the grounds of certain charges to be made by George Sheldrick, of No. 12, Hertford Cottages, Hertford Road, Kingsland, in the county of Middlesex, against the Honourable and Reverend Frederic Smyth Monckton, a clerk in holy orders of the United Church of England and Ireland, and minister or perpetual curate of the perpetual curacy or church of Saint Peter, otherwise Saint Peter de Beauvoir Town, in the parish of West Hackney, in the county of Middlesex and diocese of London, that, he the said Frederic Smyth Monckton has, within two

years last past, in the said diocese of London, offended against the laws ecclesiastical, do, by these presents and in pursuance of the provisions of the said act authorizing us in this behalf, require you, John Patient, Richard Wade, Richard Stapley Miles, &c., &c., to appear personally before the said commissioners, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, on Friday, the 14th day of March, in the present year, at the hour of ten in the forenoon, and there to take the oath of a witness, and to give evidence touching and concerning the charges aforesaid, to be then and there inquired into, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof.

Given under our hands and seals, the 13th day of March, in the year of our Lord 1845.

STEPHEN LUSHINGTON (L.S.),  
JOHN SINCLAIR (L.S.),  
WILLIAM STONE (L.S.).

When the commissioners have reported that there exists a *prima facie* ground for instituting proceedings, or in the first instance, it is competent (as we have seen), to the Bishop, to send the case by letters of request to the judge of the Arches Court of Canterbury.

The letters of request in each several case are as follows:—

### *Letters of Request in the first Instance.*

Henry, by Divine permission, Bishop of Exeter, to the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate or

some other competent judge in this behalf; whereas, by a certain act of Parliament, passed in the session of Parliament, holden in the third and fourth years of the reign of Her present Majesty Queen Victoria, intituled, "An Act for the better enforcing Church Discipline" it is enacted, that in every case of any clerk in holy orders, of the united Church of England and Ireland, who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report, as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or if he shall think fit of his own mere motion, to issue a commission under his hand and seal to five persons, of whom one shall be his Vicar-General, or an archdeacon, or rural dean, within the diocese, for the purpose of making inquiry as to the grounds of such charge or report. And whereas it is in and by the said act also enacted, that it shall be lawful for the bishop of any diocese, within which any such clerk shall hold any preferment; or if he hold no preferment, then for the bishop of the diocese within which the offence is alleged to have been committed, in any case, if he shall think fit, either in the first instance or after the commissioners shall have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the court of appeal of the province, to be there heard and determined according to the law and practice of such court.

And whereas the Reverend Henry Erskine Head, a Clerk in Holy Orders of the said United Church of

England and Ireland. and Rector of the rectory and parish church of Feniton, in the county of Devon and diocese of Exeter, and province of Canterbury, is charged with having, within our said diocese of Exeter, offended against the laws ecclesiastical by having written and published or caused to be published in a certain newspaper called "The Western Times," dated "Exeter, Saturday, August twenty-first, one thousand eight hundred and forty-one," a letter entitled "A View of the Duplicity of the Present System of Episcopal Ministration, in a letter addressed to the parishioners of Feniton, Devon, occasioned by the Bishop of Exeter's circular on Confirmation, by Henry Erskine Head, A.M., Rector of Feniton, Devon," in which letter it is openly affirmed and maintained that the "Catechism," the "Order of Baptism," and "the Order of Confirmation," in the Book of Common Prayer, contain erroneous and strange doctrine, and wherein are also openly affirmed and maintained other positions in derogation and depraving of the said Book of Common Prayer, contrary to the statutes and to the constitutions and canons ecclesiastical of the realm, and against the peace and unity of the Church. Now therefore we, the said Bishop of Exeter do hereby request you, the said Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate, or some other competent judge in this behalf, to issue a citation or decree under seal of the said court, calling upon the said Henry Erskine Head, Clerk, to appear at a certain time and place therein to be specified, then and there to answer to certain articles, heads, positions, or interrogatories, touching and concerning his soul's health,

and the lawful correction and reformation of his manners and excesses, and more especially for having written and published, or caused to be published, the letter aforesaid in manner aforesaid, to be administered to him at the voluntary promotion of Ralph Sanders, of the city of Exeter, Gentleman, and to hear and determine the said cause according to the law and practice of the said court.

In witness whereof we have hereunto set our hand and seal this ninth day of November, in the year of our Lord one thousand eight hundred and forty-one, and in the eleventh year of our consecration.

H. EXETER, (L.S.)

Signed, sealed, and delivered in the presence of  
EDWARD TOLLER, Jun.

*Letters of Request after primâ facie Ground.*

Henry, by Divine permission, Lord Bishop of Worcester, to the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your Surrogate, or any other competent judge in this behalf.

Whereas the Reverend John Jones, a Clerk in Holy Orders, of the United Church of England and Ireland, and perpetual Curate, Incumbent, or resident Minister of the church or chapel of the township of Cradley in the parish of Hales Owen, in the county and diocese of Worcester and province of Canterbury, is charged with having in our said diocese of Worcester and within two years last past offended against the laws ecclesiastical,

in having committed the crime of adultery, fornication, or incontinence. And whereas an application was made to us by Absolom Cox Homer, of the township of Cradley, in that part of the parish of Hales Owen which is in the county of Worcester, Collector of Taxes, and Thomas Bloomer, of the same township, Nailfactor's Clerk, that we would issue a commission under our hand for the purpose of making inquiry as to the grounds of such charge. And whereas by virtue and in pursuance of an Act of Parliament made and passed in the session of Parliament holden in the third and fourth years of the reign of Her present Majesty, entitled "An Act for better enforcing Church Discipline," we did, on the 14th day of February, 1844, send a notice under our hand to the said Reverend John Jones of our intention to issue such commission, such notice containing an intimation of the nature of the offence, and the names, addition, and residence of the party on whose application such commission was about to issue, and which notice was personally served on the said Reverend John Jones, on the 16th day of the said month of February. And whereas on the 2nd day of March in the said year we did issue a commission under our hand and seal to the Reverend Henry Arthur Woodgate, Clerk, B. D. Rector of Bellroughton in the county and diocese of Worcester, and Rural Dean within the said diocese; the Reverend Thomas Baker, Clerk, M. A. Rector of Hartlebury in the county and diocese of Worcester and Rural Dean within the same diocese; the Reverend John Peel, Clerk, M. A. Rector of Stone in the county and diocese of Worcester; the Reverend Thomas Legh Claughton, Clerk, M. A. Rector of Kidderminster in the county and diocese of Worcester; and the

Reverend John Downall, Clerk, M.A. Curate of Saint George's Chapel in this said parish of Kidderminster in the county and diocese of Worcester, for the purpose of making inquiry as to the grounds of such charge. And whereas on the said second day of March, notice of the time and place when and where the meeting of the said commission was intended to be held was given in writing under the hand of the said Reverend Thomas Baker, (one of the commissioners aforesaid,) and on the same day was served on the said Reverend John Jones. And whereas, on the 11th day of the said month of March, the said commissioners met in pursuance of and at the time and place mentioned in the said notice, and examined witnesses on oath in support of the said charge, at which said meeting the said Reverend John Jones, or his agent, attended and cross-examined the said witnesses, and the proceedings being closed, and the said commissioners having duly considered the depositions taken before them, one of the said commissioners did on the same day openly and publicly declare that they were unanimously of opinion that there was *prima facie* ground for instituting further proceedings. And whereas the said commissioners did transmit to us, under their hands and seals, the depositions of the witnesses so as aforesaid taken before them, and a report that there was *prima facie* ground for instituting further proceedings against the said Reverend John Jones, and the said report has been and now is filed in the registry of our said diocese. And whereas no articles have been filed in the registry of our said diocese, and the said Reverend John Jones hath not given his consent that we the Bishop aforesaid should pronounce sentence without further proceedings, and we

the Bishop aforesaid, have thought fit to send the case by letters of request to the Court of Appeal of the province. We do therefore request you the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate, or some other competent judge in this behalf, to issue a citation or decree under seal of the said court citing the said Reverend John Jones to appear at a certain time and place therein to be specified, and answer to certain articles, heads, positions, or interrogatories, touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses, and more especially for having been guilty of the crime of adultery, fornication, or incontinence, and for his lewd and profligate life, to be administered to him at the voluntary promotion of the said A. C. Homer, and T. Bloomer, and finally to hear and determine the said cause, according to the law and practice of the said court. Dated at Worcester this 4th day of November, 1844, and in the fourth year of our translation.

(Signed) H. WORCESTER, (L.S.)

These letters of request are presented to the Official Principal or Judge of the Arches Court of Canterbury, and having been accepted by him, the proceedings assume the character of a suit instituted in that Court, independently of any of the provisions of the Act of Parliament, and the same forms now apply to each. Prior, however, to the office of the judge of the Arches Court being promoted, a bond of the following tenor is required from the intended promoter.



### *Bond of Promoter.*

Know all men by these presents that we Ralph Sanders of the city of Exeter, Gentleman, and A.

[illegible]

The condition of this obligation is such that where-  
as there is a cause of the office of the judge promoted  
and brought or intended to be promoted and brought by  
Ralph Sanders of the city of Exeter, Gentleman, against  
the Reverend Henry Erskine Head, Clerk in Holy Or-  
ders of the United Church of England and Ireland, and  
Rector of the Rectory and Parish Church of Feniton,  
in the county of Devon and diocese of Exeter, and  
province of Canterbury, to answer to certain articles,  
heads, positions, or interrogatories touching and con-  
cerning his soul's health and the lawful correction and  
reformation of his manners and excesses, and more espe-  
cially for having, within the said diocese of Exeter, offen-  
ded against the laws ecclesiastical, by having written and  
published or caused to be published in a certain news-

paper called the "Western Times," dated Exeter, Saturday, August 21st, 1841, a letter entitled "A View of the Duplicity of the present System of Episcopal Ministration, in a letter addressed to the parishioners of Feniton, Devon, occasioned by the Bishop of Exeter's circular on Confirmation, by Henry Erskine Head, A. M. Rector of Feniton, Devon," in which letter it is openly affirmed and maintained that the Catechism, the order of Baptism, and the order of Confirmation, in the Book of Common Prayer, contain erroneous and strange doctrines, and wherein are also openly affirmed and maintained other positions in derogation and depraving of the said Book of Common Prayer, contrary to the statutes and to the constitutions and canons ecclesiastical of the realm, and against the peace and unity of the Church. If, therefore, the said Ralph Sanders shall fail in proof of the matters deduced in the said articles, heads, positions, or interrogatories, and therefore pay all costs and charges as the said judge or his surrogate shall tax or allot in the said cause, then this obligation to be void and of none effect, or else to remain in full force and virtue.

RALPH SANDERS, (L.S.)

A. B. (L.S.)

Sealed and delivered in the presence.

C. D.

After this bond has been given, a decree or process, following the tenor of the letters of request, is issued under seal of the Arches Court.

*Decree by Letters of Request.*

Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular Clerks and Literate Persons, whomsoever and wheresoever, in and throughout the whole Province of Canterbury, into whose hands these Presents shall come, greeting.

Whereas we have lately received letters of request from the Right Reverend Father in God, Henry, by divine permission Bishop of Exeter, of the tenor following, to wit:—"Henry, by divine permission Bishop of Exeter, to the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury lawfully constituted, your surrogate, or some other competent judge in this behalf: whereas, by a certain act of Parliament passed in the session of Parliament holden in the third and fourth years of the reign of Her present Majesty, Queen Victoria, intituled "An Act for better enforcing Church Discipline," it is enacted that in every case of any clerk in holy orders of the United Church of England and Ireland, who may be charged with any offence against the laws ecclesiastical, or of or concerning whom there may exist scandal or evil report as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or, if he shall think fit, of his own mere motion, to issue a commission, under his hand and seal, to five persons, of whom one shall be his vicar-general or an archdeacon or rural dean within the diocese, for the

purpose of making inquiry as to the grounds of such charge or report. And whereas it is in and by the said act also enacted that it shall be lawful for the bishop of any diocese within which any such clerk shall hold preferment; or, if he hold no preferment, then for the bishop of the diocese within which the offence is alleged to have been committed, in any case if he shall think fit, either in the first instance or after the commissioners shall have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case by letters of request to the Court of Appeal of the province, to be there heard and determined according to the law and practice of such court; and whereas the Reverend Henry Erskine Head, a Clerk in Holy Orders of the said United Church of England and Ireland, and rector of the rectory and parish church of Feniton, in the county of Devon, and diocese of Exeter and province of Canterbury, is charged within our said diocese of Exeter with having offended against the laws ecclesiastical by having written and published, or caused to be published, in a certain newspaper called "The Western Times," dated Exeter, Saturday, August 21, 1841, a letter intituled, "a View of the Duplicity of the present System of Episcopal Ministration, in a letter addressed to the parishioners of Feniton, Devon, occasioned by the Bishop of Exeter's Circular on Confirmation, by Henry Erskine Head, A.M., Rector of Feniton, Devon," in which letter it is openly affirmed and maintained that the Catechism, the order of Baptism, and the order of Confirmation, in the Book of Common Prayer, contain erroneous and strange doctrines; and wherein are also openly affirmed and maintained positions in derogation

and depraving of the said Book of Common Prayer, contrary to the statutes and to the constitutions and canons ecclesiastical of the realm, and against the peace and unity of the Church; now, therefore, we, the said Bishop of Exeter, do hereby request you, the said Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate, or some other competent judge in this behalf, to issue a citation or decree, under seal of the said court, calling upon the said Henry Erskine Head, Clerk, to appear at a certain time and place, therein to be specified, then and there to answer to certain articles, heads, positions, or interrogatories touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses, and more especially for having written and published, or caused to be published, the letter aforesaid, in manner aforesaid, to be administered to him at the voluntary promotion of Ralph Sanders, of the city of Exeter, Gentleman, and to hear and determine the said cause according to the law and practice of the said court.

In witness whereof, we have hereunto set our hand and seal this 9th day of November, in the year of our Lord 1841, and in the eleventh year of our consecration.

H. EXETER, (L.S.)

Signed, sealed, and delivered in the presence of  
EDWARD TOLLER, Jun."

And whereas, at the petition of the proctor of the said Ralph Sanders, and in aid of justice, we have accepted the said letters of request, and decreed to proceed

according to the tenor thereof, and in pursuance thereof have decreed the said Reverend Henry Erskine Head, Clerk, rector of the rectory and parish church of Feniton, in the county of Devon, diocese of Exeter and province of Canterbury, to be cited and called into judgment on the day, at the time and place, and to the effect and in manner and form hereunder written (justice so requiring). We do, therefore, hereby authorize and empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Reverend Henry Erskine Head, Clerk, to appear personally, or by his proctor duly constituted, before us, our surrogate, or some other competent judge, in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after he shall have been served with these presents, if it be a general session bye-day, or additional court-day of the said court, otherwise on the general session, bye-day, or additional court-day of the said court then next following, at the hour of ten o'clock in the forenoon, and there to abide during the sitting of the court, if necessary, then and there to answer to certain articles, heads, positions, or interrogatories touching and concerning his soul's health and the lawful correction and reformation of his manners and excesses, and more especially for having, within the said diocese of Exeter, offended against the laws ecclesiastical by having written and published, or caused to be published, in a certain newspaper called "The Western Times," dated Exeter, Saturday, August 21, 1841, a letter entitled A "View of the Duplicity of the present System of Episcopal Ministration, in a letter addressed to the parishioners of

Feniton, Devon, occasioned by the Bishop of Exeter's Circular on Confirmation, by Henry Erskine Head, A.M. Rector of Feniton, Devon," in which letter it is openly affirmed and maintained that the Catechism, the order of Baptism, the order of Confirmation, in the Book of Common Prayer, contain erroneous and strange doctrine, and wherein are also openly affirmed and maintained other positions in derogation and depraving of the said Book of Common Prayer, contrary to the statutes and to the constitutions and canons ecclesiastical of the realm, and against the peace and unity of the Church, to be administered to him by virtue of our office, at the voluntary promotion of the said Ralph Sanders; and further to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Ralph Sanders; and what you shall do, or cause to be done, in the premises, you shall duly certify us, our surrogate, or some other competent judge in this behalf, together with those present.

Dated at London, the 11th day of November, in the year of our Lord, 1842.

WM. TOWNSEND, (L.S.), Registrar.

*Decree by Letters of Request.*

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular Clerks and Literate Persons whomsoever and wheresoever, in and throughout the whole Province of Canterbury,

into whose hands these Presents shall come, greeting.

Whereas we have received letters of request from the Right Reverend Father in God, , Bishop of , of the tenor following, to wit,  
 “ by divine permission Bishop of , to the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate, or any other competent judge in this behalf. Whereas, by an act of Parliament passed in the session of Parliament holden in the third and fourth years of the reign of Her present Majesty Queen Victoria, intituled “ An Act for better enforcing Church Discipline,” it is enacted that in every case of any clerk in holy orders of the United Church of England and Ireland who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal or evil report, as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or, if he shall think fit, of his own mere motion, to issue a commission under his hand and seal, as therein directed, for the purpose of making inquiry as to the grounds of such charge or report. And whereas it is by the said act also enacted that it shall be lawful for the bishop of any diocese within which any such clerk shall hold any preferment, or if he hold no preferment then for the bishop of the diocese within which the offence is alleged to have been committed, in any case if he shall think fit, either in



the first instance or after the commissioners have reported that there is sufficient *prima facie* ground for instituting proceedings, and before the filing of the articles, but not afterwards, to send the case, by letters of request, to the Court of Appeal, of the province, to be there heard and determined, according to the law and practice of such court: And whereas A—— B——, of the parish of , in the city and county of , a Clerk in Holy Orders of the said United Church of England and Ireland, but not holding any preferment therein, is charged with having been convicted at the General Quarter Sessions of the Peace of our Sovereign Lady the Queen, holden at the in and for the city and county of , on , the day of , in the year of our Lord 18—, of having, in the parish of aforesaid, in the city and county of aforesaid, wickedly and unlawfully solicited, invited, and endeavoured to persuade one C—— D—— to permit or suffer him the said A—— B—— wickedly and feloniously to commit that detestable and abominable crime called buggery with the said C—— D——, against the order of nature and against the peace of our Lady the Queen, her crown and dignity: And whereas the said offence has been committed within our diocese of and , to the great scandal of the Church: Now, therefore, we the said Bishop of and do hereby request you the said Right Honorable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate, or some other competent judge, to issue a citation or decree, under seal of the said court, calling

upon him the said A—— B—— to appear at a certain time and place therein to be specified, then and there to answer to certain articles, heads, positions, or interrogatories, touching and concerning his soul's health and the lawful correction and reformation of his manners and excesses, and touching and concerning the degradation, deprivation, or suspension of him the said A—— B——, a Clerk in Holy Orders, from the ministry and from the performance of all clerical functions whatever within our diocese of , by reason of his having been convicted as aforesaid, and thereby of having caused great scandal to the Church, to be administered to him at the voluntary promotion of E——— F———, of the city of , Gentleman, and to hear and determine the said cause according to the law and practice of the said court. In witness whereof we have hereunto set our hand and seal this day of in the year of our Lord 18 , and in the year of our consecration." And whereas, at the petition of the proctor of the said E——— F———, and in aid of justice, we have accepted the said letters of request, and decreed to proceed according to the tenor thereof, and in pursuance thereof have decreed the said Reverend A—— B——, of the parish of , in the city and county of , a Clerk in Holy Orders of the said United Church of England and Ireland, but not holding any preferment therein, (the said Reverend A—— B—— being charged with having been convicted, at the General Quarter Sessions of the Peace of our Sovereign Lady Queen Victoria, holden at , in and for the city and county of , on , the day of , in the year of our Lord 18 , of having, in the parish of

aforesaid, in the city and county of aforesaid, wickedly and unlawfully solicited, invited, and endeavoured to persuade one C—— D—— to permit and suffer him the said A—— B—— wickedly and feloniously to commit that detestable and abominable crime called buggery with the said C—— D——, against the order of nature, and against the peace of our Lady the Queen, her crown and dignity; and the said offence having been committed within the diocese of \_\_\_\_\_ and province of Canterbury, to the great scandal of the Church,) to be cited and called into judgment, on the day, at the time and place, and in manner and form hereunder written (justice so requiring): We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Reverend A—— B——, Clerk, to appear personally, or by his proctor duly constituted, before us, or our surrogate, or some other competent judge in this behalf, in the Common Hall, of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after he shall have been served with these presents, if it be a general session, bye-day, or additional court-day of the said court, otherwise on the general session, bye-day, or additional court-day of the said court then next ensuing, at the hour of ten o'clock in the forenoon, and there to abide during the sitting of the court if necessary, then and there to answer to certain articles, heads, positions, or interrogatories, touching and concerning his soul's health and the lawful correction and reformation of his manners and excesses, and touching and concerning the degradation, depriva-

tion, or suspension of him the said Reverend A—— B——, Clerk in Holy Orders, from the ministry and from the performance of all clerical functions whatever within the province of Canterbury, by reason of his having been convicted as aforesaid, and thereby of having caused great scandal to the Church, to be administered to him by virtue of our office, at the voluntary promotion of the said E—— F——, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said E—— F——; and what you shall do or cause to be done in the premises you shall duly certify us, our surrogate, or some other competent judge in this behalf, together with these presents. Dated at London, this  
 day of                      , in the year of our Lord 18 .

The issue of this decree places the suit on the same footing as the older criminal proceedings which the Act of Parliament has left untouched, and I will therefore at once advert to the latter, the practice in each being henceforward identical.

### *Suits against Laymen.*

These suits are still entirely regulated by the ancient forms of the ecclesiastical law.

Not being directed to the reparation of a private injury or loss, like civil cases, they are regarded as a proceeding emanating from the office of the judge, and can only be instituted *ad publicam vindictam*, to punish or restrain for the future the commission of any outrage on public decency or the established religion of the nation. They may be brought either by the mere, or

at the voluntary promotion of the office of the judge. The first, which is a proceeding now altogether disused and obsolete, is instituted on the mere motion of the judge, who would appoint a proctor of his court, by the denomination of the necessary promoter of his office, for the purpose of carrying out the intended accusation. The other, which is the every-day process of modern times, may be brought as well by any private individual as by a public minister, such as the churchwarden or incumbent of a parish, against the asserted offender; for all persons are considered, in the eye of the law, to have a sufficient interest in abating a general nuisance.

Criminal suits of this description may be stated to be applied to the following purposes, viz., to correct gross instances of immorality in laics, and offences against the sanctity of a parish church or churchyard; to enforce the sustentation of the fabric of such church or churchyard, and the decent performance of divine service; or to punish any interference with or contempt of the power of the ordinary.

And they may again receive a further subdivision, viz.—

<i>Nature of Suit.</i>	<i>Censure.</i>
Adultery, fornication, and incontinence( <i>x</i> ).	Penance.
Incest by affinity or con- sanguinity( <i>y</i> ).	Ditto.

(*x*) *Wheatly v. Fowler, Lee*  
2, p. 376.

(*y*) *Griffiths v. Reed and*  
*Harry, Hagg. 1, p. 195. Bur-*  
*gess v. Burgess, Hagg. C. R. 1,*  
*p. 384.*

Brawling in a church or churchyard—

By words only (*a*).

Admonition or suspension *ab ingressu ecclesie* under the general law By 5 and 6 Edw. 6, c. 4, suspension *ab ingressu ecclesie*.

With smiting (*b*).

By the before-mentioned statute, and 53 Geo. 3, c. 27, excommunication, *i. e.* an imprisonment for any term not exceeding six months.

Preventing an incumbent from exercising his office of chairman at a vestry meeting (*c*).

Admonition.

Pulling down part of a church, or the fence or wall of a churchyard (*d*).

Restitution.

Not repairing a chancel or aisle when incumbent upon a party by custom, or as being the burial place belonging to a manor house, &c. (*e*).

Ditto.

(*a*) Palmer v. Roffey, Add. 2, p. 141, Williams v. Goodyer, Add. 2, p. 463.

(*b*) Lee v. Matthews, Hagg. 3, p. 169. Hoile v. Scales, Hagg. 2, p. 566.

(*c*) Wilson v. M' Math, Phill. 3, p. 67.

(*d*) Cox v. Ricraft, Lee 2, p. 373.

(*e*) Litchford v. Still, Deleg. 1699.

Against churchwardens for neglecting to repair or rebuild any decayed portion of the fabric of the church (f).

Ditto.

Against ditto, for refusing or neglecting to provide bread and wine, at the charge of the parish, against the time of the Holy Communion when duly advised and directed so to do.

Admonition (under 20 and 22 Canons.)

Against ditto for refusing or neglecting to provide decent surplices to be worn by the minister of the parish during the saying of the public prayers, or the ministration of the rites of the church.

Admonition under 58 Canon.

Against ditto for refusing or neglecting to take care and provide that the church be well and sufficiently repaired, and so from time to time kept and maintained, and conveniently decked and orna-

Admonition under 85 Canon.

(f) Lord Viscount Maynard v. Brand and Philpot, Phill. 3, p. 501. Miller and Simes v. Palmer and Killby, Curt. p. 541.

mented, (or for not repairing or keeping in proper order the parish church) (*i*).

Pulling down a monument, levelling graves, &c. without a faculty from the ordinary (*k*).

Restitution.

Making a new footpath across a churchyard and a new entrance thereto (*l*).

Ditto.

Erecting a monument, vault, &c. in a church or churchyard without a faculty (*m*).

Abatement.

Before these proceedings can be commenced permission must be first obtained from the judge, or his surrogate, on personal application, that the office may be promoted.

This is generally granted as a matter of course, the preliminary being only required in order to ascertain if the matter in question is undoubtedly of ecclesiastical cognizance. But the omission of the observance of this rule will be held fatal to the proceedings (*n*).

Security is required to be given by the intended promoter of the office, to secure to the adverse party the ex-

(*i*) *Miller and Simes v. Palmer and Killby*, Curt. 1, p. 541.

(*k*) *Hutchins v. Denziloe and Loveland*, Hagg. C. R. 1, p. 172.

(*l*) *Walter v. Montague and Lanprell*, Curt. 1, p. 253.

(*m*) *Hopper v. Davis*, Lee 1, p. 640. *Pevison v. Gell*, Deleg.

1761. *Musgrave v. Russel*, Deleg. 1778. *Maidman v. Malpas*, Hagg. C. R. 1, p. 209.

(*n*) *Carr v. Marsh*, Phill. R. 2, p. 204. *Maidman v. Malpas*, as before.



penses of the suit and to indemnify the judge in case he shall fail in substantiating his charge against the defendant.

A form of this bond has been already given. It is entered into by the party with one surety in the registry, and the sum of one hundred pounds is the usual amount of the penalty.

The decree is, or citation may be shewn by the following forms:—

### *Decree.*

Charles James, by Divine permission, Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever in and through our whole diocese of London, greeting

Decree in a  
cause of in-  
cest.

Whereas we rightly and duly proceeding, have at the petition of the proctor of A. B. of the parish of

in the county of Middlesex, decreed C. D. of the parish of in the said county of Middlesex and our diocese, aforesaid, to be cited and called to appear in judgment, on the day, at the time and place, to the effect and in manner and form hereinafter-mentioned, justice so requiring. We do, therefore, hereby authorize and empower and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause to be cited the said C. D. to appear personally, or by his proctor duly authorized, before the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General, and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or any other competent judge in this behalf, in the Common Hall, Doctors'

Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after the service of these presents, if it shall be a general session or bye-day, extra or additional court-day, otherwise on the general session or bye-day, extra or additional court-day, then next and immediately following, at the hour of the sitting of the Court, and there to abide, if occasion require, during its continuance, then and there to answer to certain articles, heads, positions, or interrogatories, to be objected and administered to him by virtue of our office of judge, touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses, and more especially for having been guilty of the foul crime of incest, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the voluntary promotion of the said A. B.; and what you shall do or cause to be done, in the premises, you shall duly certify our Vicar-General and Official Principal aforesaid, our surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London this                      day of  
in the year of our Lord                      in the                      year  
of our translation.

(L.S.)

*Citation.*

William, by Divine permission, Bishop of London, to all  
 and singular clerks and literate persons, whomso-  
 ever and wheresoever, in and throughout our whole  
 diocese of London, greeting.

Citation  
 against  
 churchwar-  
 den, to repair.

We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, John Horner Brand and John Philpot, of the parish of Saint Mary, Thacksted, otherwise Thaxted, in the county of Essex and our diocese of London, the churchwardens for the time being of the said parish, to appear personally or by their proctors or proctor duly constituted before the Right Honourable Sir William Scott, Knight, Doctor of Laws, our Vicar-General, and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature, there, on the 6th day after they shall have been served with this citation, if it be a general session, bye-day extra or additional court-day, otherwise, on the general session, bye-day, or additional court-day next following, at the hour of the sitting of the court, and there to abide if occasion require during its continuance, then and there to answer to certain articles, heads, positions, or interrogatories, to be administered to them by virtue of the office of our judge aforesaid, touching and concerning their soul's health, and the lawful correction and reformation of their manners and excesses, and more espe-

cially for refusing or neglecting to rebuild or repair the spire of the said parish church of Saint Mary, Thacksted, otherwise Thaxted aforesaid, and further to do and receive as unto law and justice shall appertain, under pain of the law and the contempt thereof, at the voluntary promotion of the Right Honourable Charles Viscount Maynard, Baron of Estaines at the Mount in the county of Essex, the patron, or having the advowson of the said church, and impropriator of the great tithes of the said parish and a proprietor therein; and what you shall do or cause to be done in the premises, you shall duly certify our Vicar-General and Official Principal aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated, &c.

### *Citation.*

Citation  
against  
churchwar-  
den, to pro-  
vide, &c.

George Henry, &c., greeting.

We do by these presents, authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, Job Cooper, and Charles Wainwright, respectively, of the parish of Shepton Mallett, in the county of Somerset, and our diocese of Bath and Wells, the churchwardens of the said parish, to appear before us, &c. to answer to certain articles, heads, positions, or interrogatories, to be objected and administered to them and each of them, by virtue of the office of our judge touching and concerning their soul's health, and the lawful correction and reformation of their manners and excesses, and more especially for having refused or neglected, on one or more occasions, to provide bread and wine at the charge of

Canon 20.

the parish against the time of the Holy Communion Canon 22. when duly advised and directed so to do; and also for having, on one or more occasions, refused or neglected Canon 58. to provide a decent surplice to be worn by the minister of the said parish, during the saying of public prayers or ministration of the rites of the Church; and further to do and receive as unto law, &c. at the promotion of the Reverend William Provis Trelawny Wickham, Clerk, rector of the parish and parish church of Shepton Mallett aforesaid.

Dated &c.

The citation or decree having been personally served upon the party therein named, the following certificate is then endorsed on it by the mandatory, and confirmed by an affidavit sworn before a surrogate of the court.

### *Certificate of Service.*

This citation or decree was duly executed, and the Certificate of within named C. D. was personally served herewith by service. shewing to her those original presents, under seal, and by leaving with her a true copy hereof at in the parish of Saint Pancras, in the County of Middlesex, this day of in the year 18

By me,  
E. F.

### *Affidavit of Service.*

A. B. against C. D.

Appeared personally the said E. F. of Doctors' Commons, in the city of London, officer of the Consistorial and Episcopal Court of London, and made oath that Affidavit of service.

all and singular the contents of the above certificate, to which he hath set and subscribed his name, were and are true.

(Signed) E. F.

On the            day of            , 18    , the said E. F. was duly sworn to the truth of this affidavit before me, G. H., surrogate.

This decree is then returned into court on the general session, bye-day, or additional court-day next following the term of service, by the proctor of the promoter, and he at the same time exhibits and files a proxy or authority from his party, to take all the usual judicial steps against the defendant.

The proxy from the promoter or plaintiff is in the following form :—

Promoter's  
proxy.

Whereas a citation or decree hath issued under seal of the Arches Court of Canterbury, by letters of request from the Worshipful Herbert Jenner, Doctor of Laws, Commissary General of the Most Reverend Charles, by Divine Providence, Archbishop of Canterbury, Primate of all England and Metropolitan in and through the whole city and diocese of Canterbury, lawfully constituted, against George Clarkson, of Sheerness, in the parish of Minster, in the island of Sheppy, county of Kent and diocese of Canterbury, to appear before the Right Honourable Sir John Nicholl, Knight, Doctor of Laws, Official Principal of the said Arches Court of Canterbury, lawfully constituted, his surrogate, or some other competent judge, at a certain time and place therein mentioned, to answer to certain heads, positions, or articles to be objected against him, by virtue of the

office of the judge, concerning the health of his soul and the lawful correction and reformation of his manners and excesses, and more especially for having created a disturbance in the parish church of the aforesaid parish of Minster, during the time of divine service, and for quarrelling, chiding, and brawling in the said church during such time, at the voluntary promotion of the Reverend Henry Turmine, Clerk, perpetual curate of the parish of Minster aforesaid. Now know all men, by these presents, that I, the said Reverend Henry Turmine, Clerk, for divers good causes and considerations me thereunto especially moving, have nominated, constituted, and appointed, and do hereby expressly nominate, constitute, and appoint A. B., of Doctors' Commons, London, Notary Public, one of the Procurators-General of the Arches Court of Canterbury, or, in his absence, any other proctor of the said court, to be my true and lawful proctor, for me and in my name to appear before the Right Honourable Sir John Nicholl, Knight, Doctor of Laws, Official Principal of the said Arches Court of Canterbury, lawfully constituted, his surrogate, or some other competent judge in this behalf, and exhibit this my special proxy, and by virtue thereof for me and in my name to exhibit articles against the said George Clarkson, and pray and procure the same to be admitted, and to take such further steps in the premises as shall be necessary towards procuring the said George Clarkson to be canonically and according to the exigency of the law corrected and punished for the same, and generally to do, perform, and execute all such other acts, matters, and things as shall be requisite and necessary to be done for me and in my behalf in and about the premises, and to abide

for me in judgment until definitive sentence or final decree shall be given and pronounced therein; and I do hereby also authorize and empower my proctor aforesaid, as often as he shall see fit and as occasion shall require, one or more other proctor or proctors, or other fit and competent person or persons, to make, name, substitute, and appoint, and the same at pleasure to revoke; hereby ratifying, allowing, and confirming all and whatsoever my said proctor or his substitute shall lawfully do, or cause to be done, for me and in my name in and about the premises. In witness whereof I have hereunto set my hand and seal, this tenth day of June, in the year of our Lord 18 .

(Signed) H. TURMINE, (L.S.)

Signed, sealed, and delivered by the said Henry Turmine, in the presence of us.

A. B. of &c. &c.

C. D. of &c. &c.

The decree or citation having been returned, and the proxy from the promoter exhibited, an appearance is generally given by the party cited, or by a proctor authorized on his behalf, on the same day. If no appearance is given, the certificate of the citation is continued; *i. e.* the time is enlarged to the next court-day: for no application can be made that the party cited should be pronounced in contempt merely for an omission to appear on the exact day of the return (*o*).

A proctor having given an appearance on behalf of the defendant, either immediately or before a decree of contempt has passed, will exhibit a proxy in the follow-

(*o*) The proceeding in contempt is explained subsequently.



ing form, if his client has determined to deny the truth of the accusation contained in the citation, and accordingly to put the promoter to the proof of his case.

Whereas, &c. (the heading will correspond with the former one.) Proxy of  
party cited.

Now know all men by these presents, that I the said George Clarkson, for divers good causes and considerations me thereunto especially moving, have nominated, constituted, and appointed, and do hereby expressly nominate, constitute, and appoint A. B., of Doctors' Commons, London, notary public, one of the Procurators-General, to be my true and lawful proctor, for me and in my name to appear before the Right Honourable Sir John Nicholl, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, his surrogate, or some other competent judge in this behalf, and exhibit this my special proxy, and by virtue thereof to give an appearance to the said citation or decree so issued against me as aforesaid, and pray articles; and in case the same shall be given in and admitted, then to give a negative issue thereto, and, by way of further answer, to give in an allegation or allegations, in writing, responsive thereto, on my behalf, and pray and procure the same to be admitted, and take such further steps on my behalf as shall be necessary towards procuring me to be dismissed from all further observance of justice in the said suit, and generally to do, perform, and execute all such other acts, matters, and things, &c., &c. (*as before*).

The articles having been prayed, must be brought in on the same court-day, or that immediately following;

a copy is delivered to the defendant's proctor, and the judge assigns to hear on their admission the next court-day ('p').

Articles are of the following form :—

*The Office of the Judge promoted by Montagu Burgoyne, Esquire, against the Reverend Edward Drax Free, Doctor in Divinity.*

Articles  
against a cler-  
gyman for in-  
continence.

In the name of God, amen. We John Nicholl, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to you, the Reverend Edward Drax Free, Doctor in Divinity, Rector of the parish of Sutton, in the county of Bedford, in the archdeaconry and commissaryship of Bedford, in the diocese of Lincoln and province of Canterbury, all and every the heads, positions, articles, and interrogatories touching and concerning the lawful correction and reformation of your manners and excesses, and more especially for incontinence, for profane cursing and swearing, indecent conversation, drunkenness, and immorality; for your lewd and profligate life and conversation; for neglect of divine service on divers Sundays, using the porch of the church of the said parish as a stable, and foddering cattle therein, and turning out swine into the churchyard; for refusing the use of the said church for vestry meetings lawfully called; for converting to your own use and profit the lead on the roof of the chancel of the said church; for refusing, and neglecting, and delaying to

(p) *Dobie v. Masters*, Phill. 3, *Denziloe and Loveland*, Hagg. p. 175. *Schultes v. Hodgson*, C. R. 1, p. 170. Add. 1, p. 321. *Hutchins v.*

baptize or christen divers children of your parishioners; for refusing and neglecting to bury sundry corpses; and for requiring illegal fees to be paid to you for baptisms and burials, do, by virtue of our office, at the voluntary promotion of Montagu Burgoyne, Esquire, article and object as follows:

We article and object to you, the said Edward Drax First. Free, that by the ecclesiastical laws, canons, and constitutions of the Church of England, all clerks and ministers in holy orders are particularly enjoined and required to be grave, decent, reverend, and orderly in their general deportment and behaviour in every respect, and to abstain from fornication or incontinence, profaneness, drunkenness, lewdness, profligacy, or any other excess whatever, and from being guilty of any indecency themselves, or encouraging the same in others; but that, on the contrary, they are enjoined, at all convenient times, to hear or read some of the Holy Scriptures, or to occupy themselves with some other honest study or exercise, always doing the things which shall appertain to honesty, and endeavouring to profit the Church of God, bearing in mind that they ought to excel all others in purity of life, and to be examples to other people, under pain of deprivation of their ecclesiastical benefices, suspension from the exercise of their clerical functions, or such other ecclesiastical punishment or censures as the exigency of the case and the law thereupon may require and authorize, according to the nature and quality of their offences; and this was and is true, public, and notorious, and so much you the said Edward Drax Free do know, or have heard, and in your conscience believe to be true; and we article and object to you of any other time, place, person, or thing,

and everything in this and the subsequent articles contained, jointly and severally.

Second.

Also we article and object to you, the said Edward Drax Free, that you were and are a priest or minister in holy orders of the Church of England, and that on or about the 6th day of December, in the year of our Lord 1808, you were duly and lawfully admitted and instituted in and to the said rectory and parish of Sutton, in the county of Bedford, and that an entry thereof was duly made in the muniment book kept in the Episcopal Registry of the Lord Bishop of Lincoln, at Buckden Palace, for the diocese of Lincoln, and that you were afterwards duly and lawfully inducted into the actual and corporal possession of the said rectory, and for and as the lawful rector of the said rectory and parish you have ever since been and now are commonly accounted, reputed, and taken to be; and this was and is true, public, and notorious, and we article and object to you as before.

Third.

Also we article and object to you, the said Edward Drax Free, that in supply of proof of the premises mentioned in the next preceding article, and to all other intents and purposes in the law whatsoever, the promoter of our office doth exhibit and hereto annex, and pray to be here read and inserted, and taken as part and parcel hereof, a certain paper writing, numbered 1, and doth allege and propound the same to be and contain a true and authentic copy of the act so entered and made in the said muniment book kept in the Episcopal Registry of the Lord Bishop of Lincoln for the said diocese as aforesaid, on your admission and institution in and to the said rectory and parish of Sutton, as mentioned in the next preceding article;

that the same has been carefully collated with the original entry now appearing in the said muniment book, and found to agree therewith, and has been signed by Richard Smith, the Deputy Registrar of the said diocese; and that all and singular the contents of the said exhibit were and are true, that all things were had and done as are therein contained, and that "Edward Drax Free, Clerk, D.D.," therein mentioned, and you the Reverend Edward Drax Free, Doctor in Divinity, the party accused and complained of in this cause, were and are one and the same person, and not divers, and that the rectory of Sutton therein mentioned, to which you were so admitted and instituted, and the rectory and parish of Sutton, several times mentioned in these articles, was and is one and the same place, and not divers; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that, in the latter end of the year 1810, you engaged Maria Crook, spinster, as a servant, and that she thereupon entered into your service, and went to reside in the said rectory-house; that you soon afterwards formed a criminal connection with her, and had the carnal use and knowledge of her body, and that she thereby became pregnant by you; that you continued to carry on such criminal connection during the time she remained in your service, which was for about six months; that upon her leaving your service she was pregnant, and afterwards, to wit, in the month of August, 1811, was delivered of a bastard child in the workhouse of the parish of Saint George, Hanover Square, in the county of Middlesex; and that in the

Fifth.

month of July, in the said year 1811, she, the said Maria Crook, made an affidavit before Philip Neve, Esquire, one of the magistrates of the said county of Middlesex, that she had never been married, that she was with child, and that you were the father of the child or children of which she was then pregnant, and which was likely to be born out of lawful matrimony, and to become chargeable to the parish of Saint George, Hanover Square ; that the said bastard child died soon after its birth as aforesaid, and that you paid all the expenses that had been incurred by the said parish of Saint George, Hanover Square, in the county of Middlesex, in consequence of the said delivery of the said Maria Crook of the said bastard child ; and this was and is true, public, and notorious, and we article and object to you as before.

Sixth.

Also we article and object to you, the said Edward Drax Free, that in part supply of proof of the premises mentioned and set forth in the next preceding article, and to all other intents and purposes in the law whatsoever, the promoter of our office doth exhibit and hereto annex, and pray to be here read and inserted, and taken as part and parcel hereof, a certain paper writing, numbered 2, and doth allege and propound the same to be and contain a true and authentic copy of the affidavit made by the said Maria Crook before Philip Neve, Esquire, one of the magistrates of the county of Middlesex, as mentioned in the next preceding article ; that the same has been carefully collated with the original affidavit now remaining in the custody or possession of the committee of the said parish of Saint George, Hanover Square, for the management of the poor of the said parish, called the

Poor's Board for the said parish, and found to agree therewith, and the same will be produced at the hearing of this cause ; that all and singular the contents of the said exhibit were and are true, and that "the Reverend Edward Drax Free, of Sutton, near Potton, Bedfordshire," therein mentioned, and you the Reverend Edward Drax Free, Doctor in Divinity, the party accused and complained of in this cause, were and are the same person and not divers, and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that in the latter end of the year 1812, or the beginning of the year 1813, you engaged Catharine Siggins, spinster, as a servant, and she thereupon entered into your service, and went to reside in the said rectory-house ; that you soon afterwards formed a criminal connection with her, and had the carnal use and knowledge of her body, and she became pregnant by you ; that you continued to carry on such criminal connection for several months during the said year 1813 ; that the said Catharine Siggins left your said service, she being at such time pregnant by you, and was afterwards, to wit, on the 21st day of November, in the said year 1813, at Thundridge, in the parish of Thundridge, in the county of Hertford, delivered of a female bastard child ; and that on the 26th day of February, in the year 1814, she made an affidavit before John Baron Dickinson, Esquire, one of the magistrates of the said county of Hertford, that she was so delivered of a female bastard child on the said 21st day of November, and that the same was likely to become chargeable to the said parish, and that you did get her

Seventh.

with child of the said bastard child ; and that an order was thereupon made upon you to pay and allow a certain sum for the support of such child, which was accordingly paid by you for some time, and this was and is true, public, and notorious, and we article and object to you as before.

Eighth.

Also we article and object to you, the said Edward Drax Free, that in part supply of proof of the premises mentioned and set forth in the next preceding article, and to all other intents and purposes in the law whatsoever, the promoter of our office doth exhibit and hereto annex, and pray to be here read and inserted, and taken as part and parcel hereof, a certain paper, partly printed and partly written, numbered 3, and doth allege and propound the same to be and contain the original affidavit made by the said Catharine Siggins, spinster, before the said John Baron Dickinson, Esquire, one of the magistrates of the said county of Hertford, as mentioned in the next preceding article ; that all and singular the contents of the said exhibit were and are true ; and that “ the Reverend Edward Drax Free, of Sutton, in the county of Bedford,” therein mentioned, and you, the Reverend Edward Drax Free, Doctor in Divinity, the party accused and complained of in this cause, were and are the same person, and not divers ; and that the signature “ J. B. Dickinson ” to the certificate on the said affidavit of the same having been taken and signed before him, was and is of the proper handwriting and subscription of the said John Baron Dickinson, Esquire, one of the magistrates of the said county of Hertford, and is so well known and believed to be by divers persons of good credit and reputation, who have seen him write and subscribe his



name, and are thereby become well acquainted with his manner and character of handwriting and subscription ; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Ninth. Drax Free, that some time in the beginning of the said year 1814, you engaged Margaret Johnston, spinster, as a servant, and she thereupon entered into your service, and that you soon afterwards formed a criminal connection with her, and had the carnal use and knowledge of her body, and she became pregnant by you ; and that in the beginning of the month of August, in the said year 1814, she being then far advanced in her pregnancy, left your said house, and on or about the 14th day of the said month of August was delivered of a child, begotten by you ; that some time afterwards she returned to your said service, and that you thereupon renewed your said criminal intercourse and connection with her, and she again became pregnant by you, and that being far advanced in her said pregnancy, she again left your said house, and some time in the month of November, 1815, was delivered of another child, begotten by you ; and that shortly afterwards she again returned to your said service, and you again renewed your said criminal intercourse and connection with her, and she again became pregnant by you, and that being far advanced in her said pregnancy, she again left your said house, and, on or about the 24th day of March, 1817, was delivered of another child, begotten by you, and that shortly afterwards she again returned to your said service, and you again renewed your criminal intercourse and connection with her ; that the said Margaret Johnston was for about five

years in your said service, and during such time you carried on such criminal intercourse and connection with her as aforesaid ; and this was and is true, public, and notorious, and we article and object to you as before.

Tenth.

Also we article and object to you, the said Edward Drax Free, that some time in or about the month of February, 1818, you engaged Ann Taylor, widow, as a servant, and she thereupon entered into your service, and went to reside in the said rectory house, and that you soon afterwards took indecent liberties with her person, and several times urged her and endeavoured to form a criminal intercourse and connection with her ; that she refused to comply with your desires, and resisted your importunities, and remained in your service until the latter end of the year 1822, when she quitted the same ; and this was and is true, public, and notorious, and we article and object to you as before.

Eleventh.

Also we article and object to you, the said Edward Drax Free, that in the month of December, 1822, you engaged Maria Mackenzie, spinster, as a servant, and she thereupon entered into your service, and went to reside in the said rectory house ; that you soon afterwards formed a criminal intercourse and connection with her, and had the carnal use and knowledge of her body, and she became pregnant by you ; and in the beginning of the month of May, 1823, she, being then about three months gone with child by you, was prematurely delivered of such child, and that she thereupon left your said service ; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that in the beginning of the month of June, in the said year 1823, you engaged Eliza Pierson, spinster, as a servant, and she thereupon entered into your service, and went to reside at the said rectory-house; and that you attempted to take indecent liberties with her person, and urged her and endeavoured to form a criminal intercourse and connexion with her; that she refused to comply with your desires, and resisted your importunities, and in consequence of such your conduct and behaviour towards her she did about a week after she so entered your said service quit your said house and service; and this was and is true, public, and notorious, and we article and object to you as before. Twelfth.

Also we article and object to you, the said Edward Drax Free, that for several years past you have had and kept in the said rectory-house various obscene and indecent books, containing obscene and indecent prints, and particularly an obscene and indecent book, called Aristotle's Master-piece; that you have frequently shown the same to divers persons, and particularly to the said Ann Taylor, Maria Mackenzie, and Eliza Pierson, during the time they respectively resided in your service as aforesaid; that you frequently made use of obscene and indecent language in your conversation, and exposed your person indecently to the said Ann Taylor, Maria Mackenzie, and Eliza Pierson; and this was and is true, public, and notorious, and we article and object to you as before. Thirteenth.

Also we article and object to you, the said Edward Drax Free, that for several years past you have addicted yourself to habitual and excessive drinking of wine and spirituous liquors, and particularly rum, so as to be fre- Fourteenth.

quently much intoxicated; and that you have also frequently been guilty of the vice of profane cursing and swearing; that you have at various times sworn at your servants and labourers, and made use of much profane language and many oaths; and this was and it is true, public, and notorious, and we article and object to you as before.

**Fifteenth.** Also we article and object to you, the said Edward Drax Free, that on a Friday in the month of February, 1823, about four o'clock in the afternoon, you were intoxicated, and being in the churchyard of the said parish, and a lamb belonging to you having been found dead, you made use of many profane oaths, and swore at James Steers, a man who was then employed by you as a gardener and to look after your farming concerns, and called him a damned stupid fool and a damned thief, which expression you repeated immediately afterwards, on the same day in your own yard, adjoining the said rectory-house; and this was and is true, public, and notorious, and we article and object to you as before.

**Sixteenth.** Also we article and object to you, the said Edward Drax Free, that on a day at or about Christmas, in the year 1823, you were much intoxicated, and that on your then coming out of the said rectory-house, you fell down, and on getting up again you went into the church-yard of the said parish, and that both in your said house and in the said churchyard you made use of much profane language, and many oaths; and this was and is true, public, and notorious, and we article and object to you as before.

**Seventeenth.** Also we article and object to you, the said Edward Drax Free, that the duty which has always been accus-

tomed to be done at the said church on a Sunday has been the morning service and a sermon, and that on Sunday the 5th day of December, 1819, you, without just cause or impediment, wholly omitted to perform such service, and we further article and object to you, that without just cause or impediment you wholly omitted to perform divine service in the said church on Sunday the 25th day of November, 1820, and also on every Sunday subsequent thereto, until Sunday the 24th day of December following, and that you also omitted to perform any such service on Sunday the 28th day of January, 1821, and that on the aforesaid Sundays respectively no divine service whatever was performed in the said church; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that for many years past you have been in the habit of turning swine, horses, and cows into the churchyard of the said parish, and of using the church-porch as a stable, and foddering cattle therein, and that a considerable quantity of dung has in consequence thereof frequently been collected and remained for a long time in such church-porch; that considerable damage has been done to the soil, and many of the grave-stones in the said churchyard have been broken by the said horses, and the ground therein turned up by the swine, and sometimes perforated as low as the coffins therein; that the Venerable the Archdeacon of Bedford, at his parochial visitation held for the said archdeaconry, did, on or about the 18th day of June, in the said year 1823, admonish you not to turn swine into the said churchyard in future, but that not-

Eighteenth.

withstanding such admonition, you have continued to turn swine therein as you had done before; and this was and is true, public, and notorious, and we article and object to you as before.

**Nineteenth.** Also we article and object to you, the said Edward Drax Free, that there are two keys to the door of the said church, one whereof is kept by you as rector, and the other by the churchwarden of the said parish; that there is an outer door to the chancel of the said church, to which there is only one key, which is in your possession, and that by means of such chancel door you can obtain access to the said church; that vestry meetings for the said parish have been customarily held in the said parish church, and that at Easter in the year 1821, and at Easter in the year 1823, and also at Easter in the present year 1824, notice was duly given in the said church of vestry meetings to be held for the said parish, and that a short time previous to the times of each of such vestry meetings so to be held, you obtained access to the said church by means of the said chancel door, and bolted the said church door in the inside thereof, and thereby prevented the churchwardens and parishioners from meeting in vestry in the said church, and refused to permit the said church to be opened for the said purpose; and that you have also, at other times, prevented the said churchwardens and parishioners from entering the said church and holding vestries therein in pursuance of due notice previously given for that purpose; and this was and is true, public, and notorious, and we article and object to you as before.

**Twentieth.** Also we article and object to you, the said Edward Drax Free, that, in the year 1820, the roof of the chancel of the said church being covered with lead, you,

without any lawful authority in that behalf, caused the said roof to be stripped of the lead, and slates to be substituted thereon in its stead; and that you thereupon sold and disposed of such lead, the money arising from which (after paying for such slating) you converted to your own use, and that the same amounted to a considerable sum, over and above the expense of such slates; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that on Sunday the 21st day of January, 1821, the child of Thomas Smith and Ann Smith his wife, parishioners and inhabitants of the said parish, was brought to the said church to be baptized or christened; that you then refused to baptize or christen such child until a sum of money was paid to you for the same; that the said Thomas Smith thereupon paid the sum then so demanded by you; but that having received such sum, you declared that the same was for the baptism of a former child of the said Thomas Smith and Ann Smith, which had been performed by you; and you then demanded a further sum of money for the baptism of the said child then brought to you as aforesaid; that the said Thomas Smith and Ann Smith refusing to pay such further demand, you refused to baptize the said child, and such child was not baptised; and we further article and object to you, that in the month of April or May, 1823, the corpse of a child of the said Thomas Smith and of his said wife, was brought to the churchyard of the said parish for burial or interment, due notice thereof having been previously given to you; that you then refused to perform the funeral service, and to bury such corpse, until the sum of four

Twenty-second.

shillings, as fee for such burial, was paid to you; and you then made use of many quarrelsome words; that in consequence of such your refusal the said corpse was kept a considerable time in the said churchyard; that you at last buried the same, and compelled the said Thomas Smith to pay you the fee of four shillings; and this was and is true, public, and notorious, and we article and object to you as before.

Twenty-third. Also we article and object to you, the said Edward Drax Free, that on a Sunday, in the month of August, 1823, a child of James Randall, of the said parish of Sutton, and of Amy Randall, his wife, was brought to the said church to be baptized or christened; that you at first refused to baptize such child, until a sum of money, as a fee, was paid to you for the same; that the said child was detained some time at the said church, but that you afterwards baptized such child, without a sum of money being paid for the same, but then expressed yourself angrily towards the said Amy Randall, and desired her never to come to the said church again; and this was and is true, public, and notorious, and we article and object to you as before.

Twenty-fourth.

Also we article and object to you, the said Edward Drax Free, that a child of John Saville and of Saville, his wife, parishioners and inhabitants of the said parish, died in or about Michaelmas, 1820; that on the following Monday application was made to you to bury the corpse of the said child on the following day; that you then declared you were going out, and would not bury the said corpse until the Wednesday following, and made use of profane language; that on the following day, being Tuesday, the corpse of the said child being extremely offensive and unfit to be



kept any longer without burial, and a grave for the same being prepared and then ready, application was again made to you, at the said rectory-house, to bury the said corpse on the same day, being Tuesday, when you again refused; and that the same was not buried until the next day, being Wednesday, in the month of October, in the said year 1820; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that in the month of October, in the year 1822, the corpse of a child of Thomas Gurry, and of

Twenty-fifth.

Gurry, his wife, parishioners and inhabitants of the said parish, was brought to the churchyard of the said parish for burial or interment; and that on the 31st day of December, 1822, or 1st day of January, 1823, the corpse of a child of William Giddins and

Giddins, his wife, also parishioners and inhabitants of the said parish, was also brought to the said churchyard for burial or interment; and that in the month of July, in the said year 1823, the corpse of a child of Thomas Smith and Ann Smith, his wife, also parishioners and inhabitants of the said parish, was also brought to the said churchyard for burial or interment, due notice thereof having been previously given to you on each of such occasions; that you refused to perform the funeral service, and to bury such corpses respectively, until the sum of four shillings for each of such burials or interments was paid to you, as a fee, for the same; that such sum of money was paid to you accordingly, previous to your performing the funeral service and burying such corpses; and this was and is true, public, and notorious, and we article and object to you as before.

Twenty-  
sixth.

Also we article and object to you, the said Edward Drax Free, that by such your excesses, and the gross impropriety and immorality of your conduct, in the several preceding articles set forth, you have given great offence to the parishioners and inhabitants of the said parish; and that by reason thereof they have declined generally to attend, and do not attend divine service in the said parish church; and that for a considerable time past the congregation at such service has consisted commonly of one or two poor persons and of a few poor children only; and this was and is true, public, and notorious, and we article and object to you as before.

Twenty-  
seventh.

Also we article and object to you, the said Edward Drax Free, that at the Michaelmas visitation for the year 1823, held on the 24th day of October, 1823, by the said Archdeacon of Bedford, the churchwarden, overseer, constable, and some of the parishioners of the said parish of Sutton made two several presentments to the said Archdeacon or to his official, wherein they presented several of your said excesses and improprieties, and immorality of conduct hereinbefore set forth, and that in supply of proof of the premises, the promoter of our office doth exhibit and hereto annex two paper writings, numbered 4 and 5, and doth allege and propound the same to be and contain true and authentic copies of the said two original presentments, which are now remaining in the Registry of the Archdeaconry Court of Bedford; that the same have been carefully collated with the said two original presentments, and agree therewith, and have been signed by Charles Bailey, the Deputy Registrar of the said archdeaconry; and that "the Reverend Doctor Free" and

“Doctor Free,” mentioned in the said exhibit No. 4, as rector of the said parish of Sutton, and “Doctor Free,” also mentioned in the said exhibit No. 5, as rector of the said parish of Sutton, and you the said Edward Drax Free, Doctor in Divinity, the party complained of and accused in this cause, were and are the same person and not divers; and this was and is true, public, and notorious, and we article and object to you as before.

Also we article and object to you, the said Edward Drax Free, that for your aforesaid fornication or incontinence, profane cursing and swearing, indecent conversation, drunkenness, and immorality, lewd and profligate life and conversation, neglect of duty, using the porch of the said church as a stable, and foddering cattle therein, and turning out swine into the churchyard; for refusing the use of the said church for vestry meetings lawfully called; for converting to your own use and profit the lead on the roof of the chancel of the said church; for refusing, and neglecting, and delaying to baptize or christen divers children of your parishioners; for refusing and neglecting to bury sundry corpses, and for requiring illegal fees to be paid to you for baptisms and burials, and other crimes and excesses, you ought to be canonically punished and corrected, and we article and object to you as before. Twenty-eighth.

Also we article and object to you, the said Edward Drax Free, that you are of the parish of Sutton, in the archdeaconry and commissaryship of Bedford, in the diocese of Lincoln, and province of Canterbury, and therefore and by reason of the premises and of the letters of request from the Worshipful Richard Smith, Master of Arts, Commissary of the Honourable and Twenty-ninth.

Right Reverend Father in God, George, by Divine permission, Lord Bishop of Lincoln, in and throughout the whole archdeaconry of Bedford, in the diocese of Lincoln, lawfully constituted, presented to, and accepted by us in this cause, were and are subject to the jurisdiction of this Court, and we article and object to you as before.

Thirtieth. Also we article and object to you, the said Edward Drax Free, that the said Montagu Burgoyne, the party agent in this cause, hath rightly and duly complained to us the Judge aforesaid, and to this Court, and we article and object to you as before.

Thirty-first. Also we article and object to you, the said Edward Drax Free, that all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made to us the judge aforesaid, and to this Court, we will that you the said Edward Drax Free be duly and canonically punished and corrected according to the exigency of the law, and also be condemned in the costs of this suit, made and to be made by and on the part and behalf of the said Montagu Burgoyne, Esquire, the party agent and complainant, and compelled to the due payment thereof by our definitive sentence or final decree to be read and promulged, or made and interposed in this cause; and further that it shall be done and decreed in the premises as shall be lawful and right in this behalf, the benefit of the law being always preserved.

*The Office of the Judge promoted by Homer and  
Bloomer against Jones.*

In the name of God, amen. We Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to you the Reverend John Jones, a Clerk in Holy Orders of the United Church of England and Ireland, and Perpetual Curate, Incumbent, or Resident Minister of the church or chapel of the township of Cradley, in the parish of Hales Owen, in the county and diocese of Worcester, and province of Canterbury, all and every the articles, heads, positions, or interrogatories, touching and concerning your soul's health and the lawful correction and reformation of your manners and excesses, and more especially for having been guilty of the crime of adultery, fornication, or incontinence, and for your lewd and profligate life, do by virtue of our office, at the voluntary promotion of Absalom Cox Homer and Thomas Bloomer, the church or chapel-wardens of the church or chapel of Cradley aforesaid, article and object as follows, to wit :

Articles  
against a  
clergyman  
after report.

We article and object to you, the said John Jones, First. that by the ecclesiastical laws, canons, and constitutions of the Church of England, all clerks and ministers in holy orders are particularly enjoined and required to be grave, decent, reverend, and orderly in their general deportment and behaviour in every respect, and to abstain from fornication or incontinence, lewdness, profligacy, or any other excess whatever, and from being guilty of any indecency themselves, or encouraging the same in others ; but that, on the contrary, they are

enjoined at all convenient times to hear or read some of the Holy Scriptures, or to occupy themselves with some other honest study or exercise, always doing the thing which shall appertain to honesty, and endeavouring to profit the Church of God, bearing in mind that they ought to excel all others in purity of life, and to be examples to other people, under pain of deprivation or other ecclesiastical punishment or censure, as the exigency of the case and the law thereupon may require and authorize, according to the nature and quality of their offences; and this was and is true, public, and notorious, and we article and object everything in this and the subsequent articles contained jointly and severally.

Second.

Also we article and object to you, the said John Jones, that you were and are a priest or minister in holy orders, of the United Church of England and Ireland, and were, in or about the month of February, in the year of our Lord one thousand eight hundred and twenty-two, duly instituted or licensed in and to the perpetual curacy of the church or chapel of the township of Cradley, in the parish of Hales Owen, in the county and diocese of Worcester, and for and as the lawful perpetual curate of the said perpetual curacy you have ever since been and now are commonly accounted, reputed, and taken to be; and this was and is true, public, and notorious, and we article and object as before.

Third.

Also we article and object to you, the said John Jones, that in or about the month of December, one thousand eight hundred and forty-two, you, being a married man, formed and carried on an adulterous connection and intercourse with a prostitute named Mary

Ann James, at such time residing at No. 1, Pershore Street, in the town of Birmingham, in the county of Warwick and diocese of Worcester; that on several occasions in the said month of December, and down to the month of May, in the year 1843, you, passing by the assumed name of George Allen, visited the said Mary Ann James at her lodgings, situate in Pershore Street aforesaid, where you remained for several hours at a time alone with her, and had the carnal use and knowledge of her body; and this was and is true, public, and notorious, and we article and object as before.

Also we article and object to you, the said John Fourth. Jones, that in or about the month of July, in the said year one thousand eight hundred and forty-three, you, still passing by the assumed name of Allen, frequently visited the said Mary Ann James at her then lodgings, situate in Back Street, in the said town of Birmingham, and on all or most of such occasions you remained for several hours at a time alone with and had the carnal use and knowledge of the body of the said Mary Ann James; also we article and object to you, the said John Jones, that in the latter end of the said month of July, and in the month of August, in the same year, you frequently visited the said Mary Ann James at her then lodgings, situate in Bath Passage, in the said town of Birmingham, and remained alone with her for several hours at a time, on all or most of which occasions you had the carnal use and knowledge of the body of her the said Mary Ann James; and this was and is true, public, and notorious, and we article and object as before.

**Fifth.**

Also we article and object to you, the said John Jones, that in or about the month of July or August, in the said year one thousand eight hundred and forty-three, you and the said Mary Ann James proceeded together, by a stage-coach, to the Golden Lion Inn, in the town of Stratford-upon-Avon, in the said county of Warwick, where you and the said Mary Ann James passed the night in one and the same bed, and had the carnal use and knowledge of each other's bodies; and this was and is true, public, and notorious, and we article and object as before.

**Seventh.**

Also we article and object to you, the said John Jones, that during the time you carried on the aforesaid adulterous connection with the said Mary Ann James, you frequently wrote, addressed, and sent to her letters which you signed with your aforesaid assumed name, "George Allen," and that you also gave to her a card with the names and addition, "Mr. George Allen, Post Office, Birmingham, till called for," written thereon, and desired the said Mary Ann James to address her letters to you in that manner; and this was and is true, public, and notorious, and we article and object as before.

**Eighth.**

Also we article and object to you, the said John Jones, that in part supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, we do exhibit and hereto annex and will to have here read and inserted and taken as part and parcel hereof, six certain paper writings, marked respectively D, E, F, F (a), G, and G (a), and a card marked H, and we article and object the said exhibits, marked D, E, F,



and G, to be and contain four original letters, written, addressed, and sent, on or about the times they respectively bear date, by you, the said John Jones, to the said Mary Ann James, by whom they were duly received, and the said exhibit F (a) to be a transcript of certain passages from Shakspeare's Works, presented by you on or about the thirtieth day of November, one thousand eight hundred and forty-three, to the said Mary Ann James, and the said exhibit marked G (a) to be the envelope or cover to the said exhibit marked G, and the said exhibit marked H to be the card mentioned in the next preceding article; and we further article and object, that all and singular the contents of the said exhibits D, E, F, F (a), G, and G (a), (with the exception of the certificates and the signatures of the commissioners, hereinafter mentioned, respectively written thereon), and the subscription to those marked D, E, F, and G, and the name and words "Mr. George Allen, Post Office, Birmingham, till called for," on the said exhibit H, were and are of the handwriting of you, the said John Jones, the party accused and complained of in this cause, and were and are so well known or believed to be by divers persons of good credit who are well acquainted therewith; and this was and is true, public, and notorious, and we article and object as before.

Also we article and object to you, the said John Ninth. Jones, that the person who so, as aforesaid, visited the said Mary Ann James at a house in Pershore Street, Birmingham, as objected to in the third article, and who also visited the said Mary Ann James, at her lodgings respectively situate in Back Street, and Bath Passage in the said town of Birmingham, as objected to

in the fourth article, and who, accompanied by the said Mary Ann James, proceeded by the stage coach to the Golden Lion Inn, in the town of Stratford upon Avon, as objected to in the fifth article; and you the said John Jones, the perpetual Curate, Incumbent, or Resident Minister of the church or chapel of the township of Cradley aforesaid, and the party accused and complained of in this cause, were and are one and the same person and not divers, and this was and is true, public, and notorious, and we article and object as before.

Tenth.

Also we article and object to you, the said John Jones, that for your aforesaid fornication, or incontinence, and lewd and profligate life, you ought to be canonically corrected and punished, and we article and object as before.

Eleventh.

Also we article and object to you, the said John Jones, that on or about the fifteenth day of January, one thousand eight hundred and forty-four, an application was made to the Right Reverend Father in God, Henry, by Divine permission, Lord Bishop of Worcester, by the said Absalom Cox Homer and Thomas Bloomer, charging that you, the said John Jones, being a Priest or Minister, in Holy Orders, of the United Church of England and Ireland, had within the said diocese of Worcester, and within two years then last past, offended against the laws ecclesiastical, in having been guilty of fornication and adultery, and praying that the said Lord Bishop would issue a commission under his hand, for the purpose of making inquiry as to the ground of such charge; and we further article and object, that on the fourteenth day of February, in the said year 1844, the said Lord Bishop did, by virtue of an Act of Parliament made and passed in the session of

Parliament, holden in the third and fourth years of the reign of Her present Majesty, entitled "An Act for better enforcing Church Discipline," send a notice under his hand and seal to you, the said John Jones, of his intention to issue such commission, and that such notice contained an intimation of the nature of the offence, and the names, additions, and residences of the said Absalom Cox Homer and Thomas Bloomer, (being the persons on whose application the said commission was about to issue,) and that the said notice was personally served on you, on the sixteenth day of the said month of February. And we further article and object to you, the said John Jones, that on the second day of March, 1844, the said Lord Bishop did issue a commission under his hand and seal, directed to the Reverend Henry Arthur Woodgate, Clerk, B.D., Rector of Belbroughton, in the county and diocese of Worcester, and Rural Dean within the said diocese; the Reverend Thomas Baker, Clerk, M.A., Rector of Hartelbury, in the same county and diocese, and Rural Dean within the said diocese; the Reverend John Peel, Clerk, M.A., Rector of Stone, in the same county and diocese; the Reverend Thomas Lee Claughton, Clerk, M.A., Vicar of Kidderminster, in the same county and diocese; and the Reverend John Downall, Clerk, M.A., Curate of Saint George's Chapel, in the said parish of Kidderminster, and in the diocese of Worcester, for the purpose of making inquiry as to the grounds of such charge so as aforesaid made against you, the said John Jones; and we do further article and object to you the said John Jones, that on the said second day of March, notice of the time when and place where the meeting of the said commissioners was intended to be held,

issued in writing, under the hand of the said Reverend Thomas Baker, one of the commissioners aforesaid, and on the same day was served on you, the said John Jones; and we do further article and object that on the eleventh day of the said month of March, the said commissioners met in pursuance of and at the time and place mentioned in the said notice, and examined witnesses on oath in support of the said charge, such witnesses being cross-examined by you the said John Jones or your agent; and the proceedings being closed, and the said commissioners having duly considered the depositions taken before them, one of the said commissioners did on the same day openly and publicly declare that they were unanimously of opinion, that there was *prima facie* ground for instituting further proceedings; and we do further article and object that said commissioners transmitted to the said Lord Bishop, under their hands and seals, the depositions of the witnesses, so as aforesaid taken before them, and a report that there was *prima facie* ground for instituting further proceedings against you, the said John Jones, and that the said report has been and now is filed in the registry of the said diocese of Worcester; and we do further article and object, that you the said John Jones, have not consented that the said Lord Bishop should give sentence without further proceedings being had, and no articles have been filed in the said registry; and that the said Lord Bishop hath sent the case by letters of request under his hand and seal, to us the judge aforesaid, which said letters of request have been duly presented and accepted in this cause, by reason whereof, and of the premises, you were and are subject to the jurisdiction of this court; and this was and is

true, public, and notorious, and we article and object as before.

Also we article and object to you the said John Jones, that it hath been and is on the part and behalf of the said Absalom Cox Homer and Thomas Bloomer, the parties agent and complainant in this cause, rightly and duly complained to us, the Official Principal aforesaid and to this Court, and we article and object as before. Twelfth.

Also we article and object to you, the said John Jones, that all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being given, we will that right and justice be effectually done and administered in the premises; and that you the said John Jones, for your exigency, be canonically and duly corrected and punished, according to the exigency of the law, and also be condemned in the costs made and to be made on the part and behalf of the said Absalom Cox Homer and Thomas Bloomer, and compelled to the due payment thereof by us, and our definitive sentence to be read, signed, promulged, and given in this cause. Thirteenth.

*The Office of the Judge promoted by Sanders  
against Head.*

In the name of God, amen. We Herbert Jenner Fust, (heretofore, to wit at the time of the presentation and acceptation of the letters of request and issuing and service of the decree in this cause, Herbert Jenner,) Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, do by Articles against a clergyman for affirming positions in derogation of the Book of Common Prayer.

virtue of our office, at the voluntary promotion of Ralph Sanders of the city of Exeter, Gentleman, object, give, administer to you the Reverend Henry Erskine Head, a Clerk in Holy Orders of the United Church of England and Ireland, and Rector of the rectory and parish church of Feniton in the county of Devon, and diocese of Exeter, and province of Canterbury, all and singular the articles, heads, positions, or interrogatories hereunder written, or hereafter-mentioned, touching and concerning your soul's health, and the lawful correction and reformation of your manners and excesses, and more especially for your having offended against the laws, statutes, and constitutions, and canons ecclesiastical of the realm, by having written and published or caused to be published in a certain newspaper, called the "Western Times," dated "Exeter, Saturday, August 21, 1841, a letter intituled, "a View of the Duplicity of the present System of Episcopal Ministration, in a Letter addressed to the Parishioners of Feniton, Devon, occasioned by the Bishop of Exeter's Circular on Confirmation, by Henry Erskine Head, A.M., Rector of Feniton, Devon," in which letter it is openly affirmed and maintained that the "Catechism," the "order of Baptism," and the "order of Confirmation," in the Book of Common Prayer, contain erroneous and strange doctrines; and wherein are also openly affirmed and maintained other positions in derogation and depraving of the said Book of Common Prayer, contrary to the said laws, statutes, and to the constitutions and canons ecclesiastical of the realm, and against the peace and unity of the Church, us follows:—to wit.

First.

We article and object to you, the said Reverend Henry Erskine Head, Clerk, that you know, believe, or

have heard that by the laws, statutes, constitutions, and canons ecclesiastical of the realm, it is expressly forbidden to any parson, vicar, or other minister whatsoever of the United Church of England and Ireland, to say open prayer, in any church or chapel, or other place of public worship, or to administer the sacraments, or other rites and ceremonies of the Church, in any other form or after any other order than those contained in the Book of Common Prayer, and administration of the sacraments and other rites and ceremonies of the Church of England as by law established, and that it is also expressly forbidden to any such parson, vicar, or other minister of the said United Church of England and Ireland, whatsoever, to preach, declare, or speak any thing to the derogation of the said Book of Common Prayer and administration of the Sacraments and other rites and ceremonies of the Church of England, or of any thing therein contained or of any part thereof, and that all ordinaries are empowered to take cognizance of such offences committed within the limits of their several jurisdictions, and to punish the offenders by admonition or suspension or deprivation according to the exigency of the case; and we article and object of everything in this and the subsequent articles contained, jointly and severally.

Also we article and object to you, the said Reverend Second.  
Henry Erskine Head, Clerk, that for many years last past you have been, and now are, a Priest or Minister in Holy Orders of the United Church of England and Ireland, and for several years have been and now are Rector of the Rectory and Parish Church of Feniton, in the county of Devon, and diocese of Exeter, and province of Canterbury, and have been rightly and lawfully

constituted and inducted in and to the said rectory, and that for and as the lawful rector of the said rectory, you have for several years last past been and now are commonly accounted, reputed, and taken; and we article and object of any other time, parish, ordination, institution, induction, or promotion, as shall appear from the lawful proof to be made in this cause, and as before.

Third.

Also we article and object to you, the said Reverend Henry Erskine Head, Clerk, and in supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, we do exhibit and hereto annex a certain paper writing, marked with the letter A, and will that the same be received and taken as part and parcel hereof, and as if herein read and inserted, and do propound the same to be and contain a true and authentic copy of the act of institution of you, the said Reverend Henry Erskine Head, in and to the said Rectory and Parish Church of Feniton, in the county of Devon, and diocese of Exeter, and province of Canterbury, and that the same hath been faithfully extracted from the Register Book of Institutions kept and remaining in the principal registry of the Lord Bishop of Exeter, at the city of Exeter, and hath been carefully collated with the original entry therein, and agrees therewith, and that the said authentic copy or exhibit is subscribed by Ralph Barnes, deputy registrar of the said court, to whose subscription full faith and credit is and ought to be given; that all and singular the contents of the said original entry and exhibit were and are true, that all things were so had and done as therein contained, and that Henry Erskine Head, Clerk, therein mentioned, and you, the Reverend Henry Erskine Head, Clerk,



articled against in this cause, were and are one and the same person, and not divers; that the rectory and parish church of Feniton, in the county of Devon, and diocese of Exeter, and province of Canterbury, therein mentioned, and the rectory and parish church of Feniton, in the said county, diocese, and province mentioned in the next preceding article was and is one and the same ecclesiastical living, benefice, or promotion, and not divers, and this was and is true, and we article and object as before.

Also we article and object to you, the said Reverend Henry Erskine Head, Clerk, that you, the said Reverend Henry Erskine Head, in the month of August, in the year of our Lord 1841, wrote and published, or caused to be published, within the diocese of Exeter, (to wit, in a certain newspaper called the "Western Times," dated "Exeter, Saturday, August 21, 1841," a letter entitled "A View of the Duplicity of Episcopal Ministration, in a Letter addressed to the Parishioners of Feniton, Devon, occasioned by the Bishop of Exeter's Circular on Confirmation, by Henry Erskine Head, A.M., Rector of Feniton, Devon," in which letter you advisedly affirmed and maintained that the "Catechism," the "Order of Baptism," and the "Order of Confirmation," in the Book of Common Prayer, contain erroneous and strange doctrine, and wherein you also advisedly affirmed and maintained other positions in derogation and depraving of the said Book of Common Prayer, contrary or repugnant to the laws, statutes, constitutions, and canons ecclesiastical of the realm, and against the peace and unity of the Church, and this was and is true, &c. Fourth.

Fifth.

Also we article and object to you, the said Reverend Henry Erskine Head, Clerk, that in the said letter mentioned in the next preceding article, are contained the following passages, "There spake the spirit of the present system of episcopal ministration; all the bishops, it is true, may not be quite so incautious as the Bishop of Exeter; but, inasmuch as they connive at and continue the use of the Catechism and Baptismal and Confirmation services in their present state, I do not hesitate to aver that they act upon a system by which the episcopal order is exalted under false pretences, and at the expense of the doctrines of the Bible. As reformation in this respect is not hopeless, and as I also am pledged by my ordination vows as a minister of the Church of England to banish and drive away all erroneous doctrine, I do hereby decline and refuse to give any countenance whatever to the office of Confirmation as it is now used by their lordships the bishops, and instead of recommending, in compliance with the episcopal circular, the perusal and repusal of that service to the young persons of this parish, I warn them all— young, old, and middle-aged—to beware, in the name of God, of the 'erroneous and strange doctrine' which it contains." "It is also a fact that the Prayer Book sins against itself, some parts of it are at variance with other parts. The fourth, sixth, eighth, and thirty-sixth canons are repugnant to the first and third ordination vows. Some of the dogmas in the Catechism, Confirmation, and Baptismal services are utterly inconsistent with the doctrines contained in the eleventh, twelfth, thirteenth, and seventeenth articles." "If their lordships wish to satisfy the public that their exaltation is

just and right, let their lordships, instead of teaching the erroneous doctrine in the Church services, banish and drive it away; instead of bending the Bible to the obliquities of the Prayer Book, let them make, or endeavour to make, this Prayer Book consistent with the Bible and with itself; instead of reversing the apostolic rule, let them 'abhor that which is evil' in the Prayer Book, and 'cleave to that which is good' in it": or to that or the like effect, a copy of which said newspaper, called the "Western Times," and dated "Exeter, Saturday, August 21, 1841," containing the said letter so written by you, the said Reverend Henry Erskine Head, Clerk, we do exhibit and hereto annex, in part supply of proof of the premises in this and the preceding article mentioned, and will that the same shall be taken and read as if herein inserted, the same being marked with the letter B; and this was, &c.

Also we article and object to you, the said Reverend Sixth. Henry Erskine Head, Clerk, that you have several times, or at least once, admitted and declared that you wrote and published, or caused to be published, in the the said newspaper called the "Western Times," the said letter in the two preceding articles mentioned, and this was, &c.

Also we article and object to you, the said Reverend Seventh. Henry Erskine Head, Clerk, that you were and are of the diocese, and Rector of the Rectory and Parish Church of Feniton, in the diocese of Exeter as aforesaid, and that there was and is a scandal and evil report in the said diocese against you, the said Reverend Henry Erskine Head, Clerk, as having offended against the laws ecclesiastical, by having written and published or

caused to be published, in the said newspaper, called the "Western Times," and dated "Exeter, Saturday, August 21, 1841," the said letter in several of the preceding articles mentioned, and that by reason thereof, and of a certain act or statute made in the Parliament holden at Westminster in the third and fourth years of the reign of her present Majesty Queen Victoria, entitled, "An Act for better enforcing Church Discipline," and of the letters of request under the hand and seal of the Bishop of the said diocese of Exeter, presented and accepted in this cause, you were and are subject to the jurisdiction of this court. And this was, &c.

Eighth.

Also we article and object to you, the said Reverend Henry Erskine Head, Clerk, that of and concerning the premises, it hath been and is rightly and duly complained by the said Ralph Sanders, the voluntary promoter of our office, to us, the judge aforesaid, and to this court. And this, &c.

Ninth.

Also we article and object to you, the said Reverend Henry Erskine Head, Clerk, that all and singular the premises were and are true, public, and notorious, of which legal proof being made to us, the judge aforesaid, and to this court, we will that you, the said Reverend Henry Erskine Head, Clerk, be duly and canonically corrected and punished according to the gravity of your offence and the exigency of the law, and that you be condemned in the costs made and to be made on the part and behalf of the said Ralph Sanders, the promoter of our office in this cause, and compelled to the due payment thereof; and that it be further done and decreed in the premises, as to right and justice shall appertain, the benefit of the law being always preserved.

*Articles.*

In the name of God, amen, &c.

We article and object to you, the said Reverend A—— B—— that by the ecclesiastical laws, canons, and constitutions of the Church of England, all clerks and ministers in holy orders are particularly enjoined and required to be decent and reverend in their general behaviour, in every respect, and to abstain from all incontinence, lewdness, immorality, obscenity, indecency, and from all unnatural and sodomitical practices and propensities, and from all other filthy lusts, or any other excess whatever, or from encouraging the same in others; and that, on the contrary, they should always bear in mind that they ought to excel all others in purity of life, and be examples to the people to live well and Christianly, and that they should always be doing the things which shall appertain to honesty, and endeavouring to profit the Church of God, and especially that they should eschew all evil conduct whereby scandal may be brought upon their sacred office, the progress of true religion hindered, and the souls of those committed to their care put in peril, under pain of degradation, deprivation, or suspension from the ministry, and from the performance of all clerical functions whatever, as the exigency of the case and the law thereupon may require and authorize in order and for the sake of purging the Church of such unworthy ministers; and this was, &c.

Articles  
against a  
clergyman  
after conviction at common law.  
First.

Also we article and object to you, the said A—— B——, that you were duly admitted to the holy order of a deacon of the Church of England, by the Honour-

Second.



as in the next preceding article mentioned. That the same hath been faithfully extracted from the original Book of Acts, kept in and for the said diocese of

and carefully collated and found to agree therewith ; that all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein contained, and that A—— B——, therein mentioned, and also A—— B——, mentioned in the said original subscription book, and the next preceding article, and you, the said Reverend A—— B——, Clerk, the party accused and complained of in this cause, were and are one and the same person, and not divers ; and this, &c.

Also we article and object to you the said A—— B——. that the names “ A—— B——,” so written and subscribed in the said original subscription book, kept in and for the diocese of , on the occasion aforesaid, were and are of the proper handwriting and subscription of you the said A—— B——, and are so well known or believed to be by divers persons of good faith, credit, and reputation, who have frequently seen you write and subscribe your name, and have thereby become well acquainted with your manner and character of handwriting and subscription ; and this, &c. Fourth.

Also we article and object to you the said A—— B——, that you were duly admitted to the holy order of a priest of the Church of England, by the Right Reverend , Lord Bishop of , at an ordination in the Cathedral Church of , on the day of , in the year 18 , and that an entry of such ordination was duly made in the Book of Acts kept in and for the said diocese of Fifth.

and preserved in the office and custody of Esq., secretary to the Lord Bishop of and that previously to and on the occasion of your being so admitted to the holy order of priest as aforesaid, you subscribed to the thirty-nine Articles of Religion of the United Church of England and Ireland, and to three articles in the 36th Canon, and to all things therein contained, and accordingly and in token thereof you signed your name "A—— B——," in the original subscription book, kept in and for the diocese of aforesaid, as now appears therein, and to which we will to refer; and this, &c.

Sixth.

Also we article and object to you, the said A—— B——, that in part supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, we do exhibit, hereto annexed, and will to be here read and inserted, and taken as part and parcel hereof, a certain paper writing marked No. 2, and we article and object the same to be and contain a true and authentic copy of the act so entered and made in the said Book of Acts kept in and for the said diocese of , and carefully collated and found to agree therewith; that all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein contained, and that A—— B——, therein mentioned, and also that A—— B——, mentioned in the said original subscription book, and mentioned in the next preceding article, and you the said Reverend A—— B——, Clerk, the party accused and complained of in this cause were and are one and the same person and not divers; and this, &c.



Also we article and object to you, the said A—— Seventh.  
B——, that the names A—— B——, so written and subscribed in the said original subscription book kept in and for the said diocese of        on the occasion aforesaid, were and are of the proper handwriting and subscription of you the said A—— B——, and are so well known or believed to be, by divers persons of good faith, credit, and reputation, who have frequently seen you write and subscribe your name, and have thereby become well acquainted with your manner and character of handwriting and subscription; and this, &c.

Also we article and object to you, the said Reverend Eighth.  
A—— B——, that, at the general quarter sessions of the peace of our Sovereign Lady the Queen, holden at       , in and for the city and county of       , on       , the        day of       , in the year of our Lord 18—, it was presented that you, the said Reverend A—— B——, by the name and addition of A—— B——, late of the parish of        aforesaid, in the city and county of        aforesaid, Clerk, being a person of most wicked and abandoned mind and disposition, on the        day of       , in the        year of the reign of our Sovereign Lady Victoria, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, in the parish of        aforesaid, in the city and county aforesaid, did wickedly and unlawfully solicit, invite, and endeavour to persuade and induce one C—— D——, to permit and suffer you, the said A—— B——, then and there, wickedly and feloniously, to commit that detestable and abominable crime called buggery, with the said C—— D——, against the order of nature, and against the

peace of our said Lady the Queen, her crown and dignity ; and we further article and object to you the said A—— B——, that at the said general quarter sessions, so holden at the \_\_\_\_\_, in the city and county aforesaid, on the day and year aforesaid, you, the said A—— B——, were tried for and found guilty of the offence aforesaid, as charged upon you, in the manner and form aforesaid ; and this, &c.

Ninth.

Also we article and object to you, the said A—— B——, that in part supply of proof of the premises mentioned in the next preceding article, and to all intents and purposes in the law, whatsoever, we do exhibit hereunto, annex, and will to have here read and inserted and taken as part and parcel hereof, a certain paper writing marked No. 3, and we article and object the same to be and contain a true and authentic copy of the original record of the said proceedings and conviction, so had, done, and made at the said general quarter sessions of the peace, so holden at the

\_\_\_\_\_, in and for the city and county of \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, as aforesaid, beginning thus :—“ City and county of \_\_\_\_\_ to wit, be it remembered that at the general quarter sessions of the peace,” ending thus “ The said A—— B—— do pay a fine of twenty shillings to our said Lady the Queen,” and thus subscribed, “

\_\_\_\_\_,” and that the same is now or lately was remaining on the rolls of the sessions for the city and county of \_\_\_\_\_, and has been duly examined with the said original record, and that A—— B——, Clerk, therein mentioned, and you the said A—— B——, were and are one and the same person, and not divers ; and this, &c.

Also we article and object to you, the said Reverend A—— B——, that for your having been convicted of the enormons, detestable, and abominable crime aforesaid, and having thereby caused great scandal to the Church of God, and your holy order, and hindering the progress of true religion, you ought, by the ecclesiastical laws, canons, and constitutions of England, to be degraded, deprived, or suspended from the ministry and from the performance of all clerical functions whatever within the province of Canterbury; and this, &c. Tenth.

Also we article and object to you, the said Reverend A—— B——, that you were and are of the city and county of , and that you were and are convicted of having committed the crime aforesaid, within the said city and county of , and that you hold no preferment in the United Church of England and Ireland; and therefore, and by reason of the premises and the letters of request from the Right Reverend Father in God, , by Divine permission, of Bishop , presented to and accepted by us in this cause, and by reason of your appearance in the same, were and are subject to the jurisdiction of this court; and this, &c, Eleventh.

Also we article and object to you, the said Reverend A—— B——, that all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made to us, the judge aforesaid, and to this court, we will that you the said Reverend A—— B—— be pronounced to have incurred and to be involved in the pains and penalties of law for having been convicted of having committed the crime aforesaid, and that you, the said A—— B——, be pro- Twelfth.

nounced to have incurred the sentence of degradation, privation, or suspension from the ministry, and from the performance of all clerical functions whatsoever, within the province of Canterbury, and may and ought to be degraded from, deprived of, or suspended from the same throughout the said province of Canterbury, according to the exigency of the law, and also be condemned in the costs of this suit, made and to be made by and on the part and behalf of the said E—— F——, the party promoting our office in this cause, and compelled to the due payment thereof, by our definitive sentence on final decree to be read and promulged or made and interposed in this cause, and further that it shall be done and decreed as may be lawful and right in this behalf, the benefit of the law being always preserved.

### *Articles.*

Articles  
against a  
clergyman for  
habitual  
drunkenness.  
First.

In the name of God, amen, &c.

We article and object to you, the said Wilfred Speer, that you now are, and for four years last past have been, a priest or minister in holy orders of the Church of England and Ireland, and were, on or about the thirteenth day of March, in the year of our Lord 1835, licensed by the Right Reverend Father in God, Charles Richard, by Divine permission, Lord Bishop of Winchester, to be perpetual curate of the perpetual curacy of Thames Ditton aforesaid, and soon after entered on the spiritual duties of the said perpetual curacy, as perpetual curate thereof, and have ever since continued to be, and save as hereinafter articulated and objected to, act as perpetual curate thereof; and we article and object everything in this and the subsequent articles to be contained, jointly and severally.

Also we article and object to you, the said Wilfred Second. Speer, that in supply of proof of the premises set forth in the next preceding article, and to all other intents and purposes in the law whatsoever, we do exhibit and hereto annex, and will to be here read and inserted and taken as part and parcel hereof, a certain paper writing marked No. 1; and we article and object the same to be and contain a true copy of the act on licensing you to the perpetual curacy of Thames Ditton, aforesaid, and that the same hath been faithfully extracted from the Book of Acts of the said Lord Bishop of Winchester, preserved in the office and custody of John Burden, Esquire, as secretary of the said Lord Bishop, and hath been carefully collated with the original entry now remaining therein, and agrees therewith; that all and singular the contents of the said exhibit, were and are true; that all things were so had and done as therein contained, and that Wilfred Speer, therein mentioned to have been licensed to the perpetual curacy of Thames Ditton aforesaid, in the county and diocese aforesaid, and you, the said Wilfred Speer, the party accused and complained of in this cause, was and is one and the same person, and not divers; and that the perpetual curacy of Thames Ditton therein mentioned, and the perpetual curacy of Thames Ditton of which you are perpetual curate, was and is one and the same perpetual curacy, and not divers; and this was, &c.

Also we article and object to you, the said Wilfred Third. Speer, that ever since your entrance on the spiritual duties of the said perpetual curacy of Thames Ditton, you have addicted yourself to the immoderate use of wine and spirituous liquors; that you have been in the habit of frequenting a public house or small inn, in Thames Dit-

ton aforesaid, known by the name of the Swan, and of there drinking to excess, and thereby becoming intoxicated, to the great scandal and offence of your parishioners and others; and this was, &c.

Fourth.

Also we article and object to you, the said Wilfred Speer, that ever since your entrance on the spiritual duties of the perpetual curacy of Thames Ditton, you have been in the habit of performing Divine service in the church of the said perpetual curacy in an indecent and irreverent manner, and have thereby and otherwise by your indecent demeanour and conduct in the said church, during the time of the performance of Divine service, caused great offence and scandal to your parishioners and other persons assembled on such occasions for the purpose of Divine worship, and that you have by such conduct and demeanour driven many of your parishioners away from attending the said church; that during the time of Divine service, on Sunday mornings, you have been constantly furnished from the aforesaid public-house or small inn, called the Swan, with a bottle of port wine or with some brandy, which you have invariably drunk in the vestry room of the said church, during the time of such service; that on many of such occasions you have thereby become and evinced by your conduct and demeanour that you were intoxicated, and have been scarcely able, by reason of such intoxication, to get through the services or preach your sermon, to the great scandal and offence of the congregation then and there assembled for the purpose of Divine worship; and this was, &c.

Also we article and object to you, the said Wilfred Speer, that on a Sunday morning in the month of June, or in the month of August, in the year of our Lord

1836, during the reading of the prayers, you were, and by your conduct and demeanour evinced that you were, in a state of intoxication, and totally unfit to finish the service, and that such your state and condition were evident, and occasioned great scandal and offence to the congregation then and there assembled for the purpose of Divine worship; that on the said occasion, at the end of the communion service, Sir Charles Sullivan, Baronet, a captain in her Majesty's navy, and a parishioner and inhabitant of the said parish, being present in the church, and observing your state and condition, called Leonard Seeley, the churchwarden of the parish, who, after communicating with the said Sir Charles Sullivan, proceeded into the vestry where you, the said Wilfred Speer, then were; and the said Leonard Seeley then and there remonstrated with you, and urged to you that by reason of your intoxication you were in an unfit state to proceed with the service; that the said Sir Charles Sullivan also went into the said vestry, and also represented to you, the said Wilfred Speer, that you were in an unfit state to continue the service, and offered that he would take upon himself to say the congregation would willingly dispense with the sermon, upon which you, the said Wilfred Speer, said, "Do you think they will excuse the sermon?" and eagerly adopted the suggestion of the said Sir Charles Sullivan; that accordingly, with your full concurrence, notice was given in the said church that there would be no sermon, and that by reason of the premises there was no sermon in the said church on the said occasion; and this was, &c.

Also we article and object to you, the said Wilfred Speer, that in the afternoon of one day in the summer Sixth.

of the year 1836 (and whilst the church of the perpetual curacy of Thames Ditton was undergoing repair), you called on Captain Rowland Edward Williams, one of your parishioners, in a state of intoxication; that on your leaving his house, on the said occasion, you attempted to mount your horse, and in so doing put your foot into the stirrup, but, in lieu of seating yourself in the saddle, you, by reason of the state of intoxication in which you then were, fell over the other side into the middle of the road; and this was, &c.

**Seventh.**

Also we article and object to you, the said Wilfred Speer, that on Sunday, the 25th day of March, in the year of our Lord 1838, on occasion of christening the child of William Karn, a parishioner and inhabitant of the said parish, you read the service in an indecent manner, and so as to be almost unintelligible, and that at such time you were, and evinced by your conduct and demeanour that you were, in a state of intoxication; and we further article and object to you, the said Wilfred Speer, that after the christening was over, the said William Karn gave you the regular fee due on such occasions; that on the said parties leaving the church you called them back again, and held up the money and said, "Look ye here at his fee," and remarked that clergymen were said to rob the poor, and added "This does not look like it," and you then and there otherwise conducted and expressed yourself in a manner inconsistent with and unbecoming to the occasion, time, and place, and so as to evince that you were, as in fact you were, in a state of intoxication; and this was, &c.

**Eighth.**

Also we article and object to you, the said Wilfred Speer, that in the afternoon of one Sunday, in the



month of July, in the said year 1838, you read the prayers in a very irreverent and unseemly manner, and that it was with extreme difficulty you were able to preach your sermon, and that on such occasion you were, and evinced by your conduct and demeanour that you were, in a state of intoxication ; and this was, &c.

Also we article and object to you, the said Wilfred Ninth. Speer, that on the morning of Sunday, the twelfth day of August, in the said year 1838, you performed Divine service in the aforesaid church in a very irreverent and indecent manner, that you made a great many mistakes, and were scarcely able to get through the duties of the said service, and that on such occasion you were, and evinced by your conduct and demeanour that you were, in a state of intoxication ; and this was, &c.

Also we article and object to you, the said Wilfred Tenth. Speer, that, in the afternoon of Sunday the tenth day of March, in the year of our Lord 1839, you were in a state of intoxication, and evinced that you were so by your conduct and demeanour ; that you read the prayers in the said church, and afterwards preached the sermon in such a manner as to be almost unintelligible, and as you proceeded you became, and evinced by your conduct and demeanour that you became, more intoxicated, and that at last, by reason of such intoxication, you sunk down in the pulpit, and were unable to give the blessing ; and this was, &c.

Also we article and object to you, the said Wilfred Eleventh. Speer, that by your indecent and disgraceful conduct, demeanour, and language, hereinbefore set forth, you have given great scandal and offence to the parishioners and inhabitants of the said parish ; that complaints having been made to the said Lord Bishop of

Winchester, his lordship directed the Reverend Robert Sutton, the Rural Dean, to inquire into the truth of such complaints; that the said Rural Dean having proceeded to make such inquiry, reported the result thereof to the said Bishop, and that thereupon the present proceedings were instituted; and we also article and object to you, that you, the said Wilfred Speer, shortly after such inquiry and report, to wit, from and after the tenth day of March last, ceased to perform and have ever since, up to the service on you of the citation by decree in this cause, abstained from the performance of spiritual duties and offices within the parish; and this was, &c.

Twelfth.

Also we article and object to you, the said Wilfred Speer, that you are of the commissaryship of Surrey, diocese of Winchester, and province of Canterbury, and therefore and by reason of the premises, and of the letters of request presented to and accepted by us in this cause, and of the appearance given for you to the citation by decree issued in this cause, were and are subject to the jurisdiction of this court; and this was, &c.

Thirteenth.

Also we article and object to you, the said Wilfred Speer, that all and singular the premises were and are true, public, and notorious, of which legal proof being made to us the judge aforesaid and to this court, we will that you, the said Wilfred Speer, be canonically corrected and punished according to the exigency of the law, and also be condemned in the costs of this suit, made and to be made on the part and behalf of the said John Burder, the party agent and complainant, and compelled to the due payment thereof by our definitive sentence or final interlocutory decree, to be read and promulged or made and interposed in this cause,

we do exhibit and hereto annex, and will to be here read and inserted, and taken as part and parcel hereof, a certain paper writing, marked No. 1, and we article and object the same to be and contain a true and authentic copy of the original entry made in the muniment book kept in the Registry of the Diocese of Lincoln, in the Episcopal Palace at Lincoln, on your being instituted to the vicarage of Gedney aforesaid, as mentioned in the next preceding article; that the same hath been faithfully extracted from the said book, and carefully collated with the original entry now remaining therein, and found to agree therewith; that all and singular the contents of the said exhibit were and are true, that all things were so had and done as are therein contained; and that Thomas Sweet Escott, Clerk, therein mentioned, and you, the said Thomas Sweet Escott, the party accused and complained of in this cause, were and are one and the same person, and not divers; and that the vicarage of Gedney therein mentioned, and the vicarage of Gedney mentioned in the next preceding article, were and are the same, and not divers; and this was, &c.

Also we article and object to you, the said Thomas Sweet Escott, that, as a priest or minister in holy orders of the Church of England, and as the vicar of the vicarage and parish church of Gedney aforesaid, you, the said Thomas Sweet Escott, are obliged to observe the laws, canons, and constitutions ecclesiastical of this realm; and this was, &c.

Also we article and object to you, the said Thomas Sweet Escott, that, in and by the 68th of the Constitutions and Canons Ecclesiastical made and agreed upon in and by the Convocation of the Province of Canter-

Fourth.

Third.

and further that it shall be done and observed in the premises as shall be lawful and right in this behalf, the benefit of the law being always preserved.

*Articles.*

In the name of God, amen, &c.

Articles  
against a  
clergyman  
for disobey-  
ing the  
canons.  
First.

We article and object to you, the said Thomas Sweet Escott, that you now are, and for several years last past have been, a priest or minister in holy orders of the Church of England, and that on or about the 30th day of July, in the year of our Lord 1835, you were lawfully and canonically instituted, by the Right Reverend Father in God, John, by Divine permission, Lord Bishop of Lincoln, in and to the vicarage of Gedney, in the county and diocese of Lincoln, and province of Canterbury, and were soon afterwards lawfully inducted in and to the vicarage and parish church of Gedney aforesaid, together with all and singular the rights, members, and appurtenances therunto belonging, or in anywise appertaining; and that you, the said Thomas Sweet Escott, have ever since been, and more particularly that you were, on the 17th day of December, in the year of our Lord 1839, and that you now are, the vicar of the said vicarage and parish church; and that for and as such vicar you, the said Thomas Sweet Escott, have, ever since your institution and induction aforesaid, been and now are commonly accounted, reputed, and taken to be; and this was, &c.

Also we article and object to you, the said Thomas Sweet Escott, that in part supply of proof of the premises mentioned in the next preceding article, and to all other intents and purposes in the law whatsoever,

bury, with the King's Majesty's license, in the year of our Lord 1603, which said constitution or canon is entitled, "Ministers not to refuse to christen or bury," it is decreed, ordained, and contained, as follows, that is to say, "No minister shall refuse or delay to christen any child, according to the form of the Book of Common Prayer, that is brought to the church to him upon Sundays or holidays to be christened, or to bury any corpse that is brought to the church or churchyard, convenient warning being given him thereof before in such manner and form as is prescribed in the said Book of Common Prayer; and if he shall refuse to christen the one or bury the other (except the party deceased were denounced excommunicated, *majori excommunicatione*, for some grievous and notorious crime, and no man able to testify of his repentance) he shall be suspended by the bishop of the diocese from his ministry by the space of three months;" or it is, by the said 68th constitution or canon, (to which we refer,) decreed and ordained to the like purport or effect; and this, &c.

Also we article and object to you, the said Thomas Sweet Escott, that, notwithstanding the premises (in the foregoing articles contained), and in contempt of the law and canon aforesaid, you, the said Thomas Sweet Escott, did, on two several occasions, happening respectively on the 16th and 17th days of December, in the year of our Lord 1839, expressly declare your determination not to bury in the churchyard of Gedney aforesaid, the corpse of Elizabeth Ann Cliff, the infant daughter of Thomas Cliff and Sarah Cliff, his wife, of the parish of Gedney aforesaid, if brought for burial to the said church or churchyard, and that accordingly, and in pursuance of such your

Fifth.

declared determination, you, the said Thomas Sweet Escott, on the 17th day of the said month of December, or on some other day in the said month, did, contrary to your duty, refuse to bury, in the churchyard of Gedney aforesaid, the corpse of the said Elizabeth Ann Cliff, then brought to the said church or churchyard, convenient warning having been given you thereof before.

Sixth.

Also we article and object to you, the said Thomas Sweet Escott, that the said Elizabeth Ann Cliff, the infant aforesaid, died within the said parish of Gedney, and that such infant (being the daughter of the said Thomas Cliff and Sarah Cliff, his wife, who are Protestants of the class of people commonly called or known as Wesleyan Methodists, and who were, in the months of August, September, October, November, and December, 1839, and had been, for some time previous thereto, in the habit of frequenting or resorting to a chapel or place of religious worship established by or for the use of a congregation of the said class of people situate within the said parish of Gedney,) had been first, to wit, on or about the 1st day of October, in the said year 1839, baptised, according to the rite or form of baptism generally received and observed among the said class of people commonly called or known as Wesleyan Methodists, that is to say, with water, and in the name of the Father, and of the Son, and of the Holy Ghost, by the Reverend Elisha Balley, a minister, preacher, or teacher of the said class of people commonly called or known as Wesleyan Methodists as aforesaid; that of the aforesaid fact of baptism you, the said Thomas Sweet Escott, were informed, as well on the 16th day of the said month of December, in the said year 1839, by the said Thomas Cliff, as on the morning

of the 17th day of the said month, by the Reverend Robert Bond, also a minister of the said class of people commonly called or known as Wesleyan Methodists, when they respectively urged and entreated you, on such two several occasions, to consent to bury the corpse of the said infant, and that by means of such information, as well as by other means, you, the said Thomas Sweet Escott, were, previous to and at the time of your refusal to bury the said corpse, well and sufficiently apprised, and aware of such fact of baptism; and that on each of the two several occasions aforesaid, as also subsequently, on the said 17th day of December, when the corpse of the said infant having been brought to the churchyard of the said parish, application was made to you for the burial thereof in the said churchyard, in manner and form prescribed by the Book of Common Prayer, you, the said Thomas Sweet Escott, did make or assign the aforesaid fact of baptism expressly as the pretext or ground of refusing to comply with such entreaties and application as aforesaid respectively.

Also we article and object to you, the said Thomas Sweet Escott, that for such your offence in the preceding articles set forth, you ought to be canonically corrected and punished; and we article and object as before. Seventh.

Also we article and object to you, the said Thomas Sweet Escott, that you, the said Thomas Sweet Escott, were, during the said month of December, in the year of our Lord 1839, and at present are, vicar of the vicarage and parish church of Gedney aforesaid, in the county and diocese of Lincoln and province of Canterbury; and therefore, and by reason of the premises and of the letters of request under the hand and Eighth.

seal of the Worshipful John Haggard, Doctor of Laws, Vicar-General of the Right Reverend Father in God, John, by Divine permission, Lord Bishop of Lincoln, and Official Principal of the Consistorial and Episcopal Court of Lincoln lawfully constituted, presented to and accepted by us in this cause, and of the appearance given for you to the citation by decree issued in this cause, were and are subject to the jurisdiction of this court; and we article and object as before.

Ninth.

Also we article and object to you, the said Thomas Sweet Escott, that the said Frederick George Mastin, the promoter in this cause, hath rightly and duly complained of the premises to us, the judge aforesaid, and to this court; and we article and object as before.

Tenth.

Also we article and object to you, the said Thomas Sweet Escott, that all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made to us, the judge aforesaid, and to this court, we will that you, the said Thomas Sweet Escott, be canonically and duly corrected and punished, according to the exigency of the law; and also be condemned in the costs of this suit, made and to be made, on the part and behalf of the said Frederick George Mastin, the promoter aforesaid, and compelled to the due payment thereof, by our definitive sentence, or final interlocutory decree, to be read and promulged, or made and interposed in this cause; and further, that it shall be done and observed in the premises as shall be lawful and right in this behalf, the benefit of the law being always preserved.



*Articles.*

In the name of God, &c.

We article and object to you, the said Reverend Robert Crawford Dillon, Clerk, that by the laws, canons, and constitutions ecclesiastical of this realm, no person whatever is publicly to read prayers, preach, administer the holy sacrament of the Lord's Supper, or perform any ecclesiastical duties, according to the rites and ceremonies of the United Church of England and Ireland, in any parish church, chapel, or other place within this realm without a license from the bishop of the diocese or ordinary of the place, having episcopal jurisdiction for that purpose, or without other lawful authority, and that you know, believe, or have heard, that persons offending in the premises are and ought to be duly and canonically punished and corrected for the same; and we article and object to you every thing in this and the subsequent articles contained jointly and severally.

Also we article and object to you, the said Reverend Robert Crawford Dillon, that the said Right Reverend Father in God, Charles James, by Divine permission Lord Bishop of London, did, by an instrument in writing under his hand and seal, and bearing date on or about the 29th day of February, in the year of our Lord 1840, duly revoke a license previously, to wit, on or about the 24th day of July, in the year of our Lord 1829, granted to you by him the said Lord Bishop of London, to perform the office of minister of the said unconsecrated chapel or building commonly called Charlotte Street Chapel, Pimlico, in the parish of Saint

Articles  
against a clergyman for  
performing  
Divine service without  
a license.

First.

Second.

George, Hanover Square, in the county of Middlesex, and in the diocese of London, and did recall the authority given to you by such license to perform the said office of minister of the chapel or building aforesaid, and did strictly enjoin and command you thenceforth to abstain from further performing the office of minister of the chapel or building aforesaid, and from officiating therein, and that such instrument of revocation was duly served upon you on the said 29th day of February; and we article and object to you as before.

Third.

Also we article and object to you, the said Reverend Robert Crawford Dillon, that, in supply of proof of the premises in the next preceding of these articles contained, the promoter of our office prays leave to refer to the original instrument of revocation of the said license previously granted to you as before mentioned, which instrument of revocation was, on or about the 2nd day of March last past, brought into and now remains in our registry of the said Consistorial Episcopal Court of London, with a certificate endorsed thereon, signed by William Henry Willett, of the personal and due service thereof on you, the said Robert Crawford Dillon, on Saturday, the said 29th day of February last past, and we further article and object to you, that Robert Crawford Dillon mentioned in the said original instrument of revocation, and you, the said Robert Crawford Dillon, the party against whom our office is promoted in this cause, were and are the same person, and not divers; and that Charlotte Street Chapel, Pimlico, mentioned in the said instrument of revocation, and the aforesaid unconsecrated chapel or building, commonly called Charlotte Street Chapel, Pimlico, several times men-

tioned in these articles, was and is one and the same chapel or building, and not divers; and we article and object to you as before.

Also we article and object to you, the said Reverend Fourth.  
Robert Crawford Dillon, that the letters "C. J." and the word "London," written in the margin of the said original instrument of revocation, mentioned in the two next preceding of these articles, were and are respectively the initials and episcopal title, and were and are of the proper handwriting and subscription of the said Right Reverend Father in God, Charles James, by Divine permission Lord Bishop of London, and are so well known or believed to be by divers persons of good faith and credit, who by having frequently seen him write are thereby, or otherwise, well acquainted with the manner and character of his handwriting, and that the impression of a seal in the margin of the said original instrument of revocation is the impression of the episcopal seal of the said Lord Bishop of London, and is so well known to be by divers persons of good credit; and we article and object to you as before.

Also we article and object to you, the said Reverend Fifth.  
Robert Crawford Dillon, that, notwithstanding the premises, you did on Sunday, the 1st day of March, 1840, take upon you publicly to read prayers, preach, administer the holy sacrament of the Lord's Supper, and perform ecclesiastical duties and divine offices, according to the rites and ceremonies of the United Church of England and Ireland, in the said unconsecrated chapel or building, commonly called Charlotte Street Chapel, Pimlico, in the said parish of Saint George, Hanover Square, in the county of Middlesex, and in the diocese of London aforesaid, without any license or lawful au-

thority for so doing, and contrary to, and in defiance of, the aforesaid injunctions of the said Lord Bishop of London; and we article and object to you as before.

Sixth.

Also we article and object to you, the said Reverend Robert Crawford Dillon, that, notwithstanding the premises in the first, second, and third preceding articles objected to you, you did on Sunday, the 8th day of March, 1840, and also on Sunday, the 15th day of March, 1840, and also on Sunday, the 22d day of March, 1840, and also on Sunday, the 29th day of March, 1840, all, or some of them, take upon you publicly to read prayers, preach, and perform ecclesiastical duties and divine offices, according to the rites and ceremonies of the United Church of England and Ireland, in the said unconsecrated chapel or building, commonly called Charlotte Street Chapel, Pimlico, in the parish and diocese aforesaid, without any license or lawful authority for so doing, and contrary to, and in defiance of, the aforesaid injunctions of the said Lord Bishop of London; and we article and object to you as before.

Seventh.

Also we article and object to you, the said Reverend Robert Crawford Dillon, that since you have been served with a citation issued under seal of this Court in this cause, and without any regard thereto, you have continued, and do still continue, publicly to read prayers, preach, and administer the holy sacrament of the Lord's Supper, and perform ecclesiastical duties according to the rites and ceremonies of the United Church of England and Ireland, in the said unconsecrated chapel or building, commonly called Charlotte Street Chapel, Pimlico, in the parish and diocese aforesaid, without any license or lawful authority for so doing, and con-

trary to and in defiance of the injunctions of the said Lord Bishop of London; and we article and object of any other time or times as shall appear from the lawful proofs to be made in this cause; and we article and object to you as before.

Also we article and object to you, the said Reverend Robert Crawford Dillon, that you are a priest or minister in holy orders of the United Church of England and Ireland, and reside within the parish of Saint George, Hanover Square, in the county of Middlesex and diocese of London, and therefore and by reason of the premises, were and are subject to the jurisdiction of this court. Eighth.

Also we article and object to you, the said Reverend Robert Crawford Dillon, that of and concerning all and singular the premises it hath been and is rightly and lawfully complained to us and to this court; and by reason thereof it is lawfully and duly articulated against you as before. Ninth.

Also we article and object, &c. Tenth.

### *Articles against Laymen.*

In the name of God, amen. We, John Nicholl, Knight, Doctor of Laws, Dean or Commissary of the Deanery of the Arches, London, Shoreham and Croydon, the peculiar and immediate jurisdiction of the Cathedral and Metropolitcal Church of Christ, Canterbury, lawfully constituted to you, Alexander McMath, of the parish of Saint Mary Aldermary, London, in the deanery of the Arches, London, and peculiar jurisdiction aforesaid, all and singular the articles, heads, positions, or interrogatories, hereunder written or hereinafter

Articles  
against a lay-  
man for pre-  
venting the  
incumbent  
from exer-  
cising the  
office of  
chairman,  
&c.

mentioned, touching and concerning your soul's health, and the lawful correction and reformation of your manners and excesses, and more especially for interrupting the Reverend H. B. Wilson, Doctor in Divinity, the Rector of the said parish of Saint Mary Aldermary, when he had taken the chair as president at a vestry meeting, held in the vestry-room within the walls of the parish church of Saint Mary Aldermary, aforesaid, preventing him from exercising the office of chairman or president of the said vestry meeting, and dispossessing him thereof, do by virtue of our office, at the voluntary promotion of the said Reverend H. B. Wilson, Doctor in Divinity, aforesaid, object, article, and administer, as follows, to wit.

First.

We article and object to you, the said Alexander McMath, that for these ten, twenty, thirty, forty, fifty, or sixty years last past and for time immemorial, and long beyond the memory of any man now living, there hath been and still is a parish and parish church called and known by the name of Saint Mary Aldermary, London, in the deanery of the Arches, London, and peculiar and immediate jurisdiction of the Cathedral and Metropolitcal Church of Christ, Canterbury, and this was and is true, public, and notorious; and we article and object every thing in this and the subsequent articles contained jointly and severally.

Second.

Also we article and object to you, the said Alexander McMath, that the said Reverend H. B. Wilson, Doctor in Divinity, being then a priest or minister in Holy Orders of the Church of England, was in or about the month of August, in the year of our Lord 1816, duly collated, instituted, and inducted in and to the rectory of Saint Mary Aldermary, London, aforesaid, and hath ever since been and now is the lawful rector of the said

parish, with all the rights, members, and appurtenances thereunto belonging or in any wise appertaining by the law, statutes, canons, and constitutions ecclesiastical of the realm, and this was and is true, public, and notorious; and we article and object as before.

Also we article and object to you, the said Alexander McMath, that at a vestry held for the parish of Saint Mary Aldermary, London aforesaid, in the vestry-room of the said parish, which is within and part of the parish church of Saint Mary Aldermary aforesaid, on Tuesday, the 16th day of March, now last past, in the present year of our Lord 1819, the said Reverend H. B. Wilson, Doctor in Divinity, the promoter of our office in this cause, Nathaniel Anger, one of the then churchwardens, John Hamman, John Custance, William Grove, Thomas Chandler, you, the said Alexander McMath, and several other of the parishioners and inhabitants of the said parish, being then present, you, the said Alexander McMath, not regarding the sacredness of the place nor the honour and estimation due to the said Reverend H. B. Wilson, when he had taken the chair as president of the said vestry meeting, did prevent the said Reverend H. B. Wilson from exercising the office of chairman or president of the said vestry meeting, and did dispossess him thereof in the indecent and unbecoming manner following, to wit: that the said vestry meeting having been held pursuant to notice duly given in the said church on the Sunday preceding, the said Reverend H. B. Wilson attended the same, as had been his constant practice ever since he had become rector of the said parish, as aforesaid, and at the appointed and usual hour took his place at the north end of the table in the said vestry-room as chair- Third.

man or president of the said meeting, being the usual and accustomed place for that purpose. That William Greve, one of the parishioners present as aforesaid, said, "I move Mr. McMath to take the chair;" that you, the said Alexander McMath thereupon took your station at the office end of the said table, and assumed the right of acting there as chairman or president of the said meeting; that the same being objected to by the said Reverend H. B. Wilson, and insisted upon by you, the said Alexander McMath, much conversation thereupon ensued, in the course of which the said Thomas Chandler said—"I see no use in so much talking, it would be better to turn the rector out of the chair," or to that or the like effect; that the said Reverend H. B. Wilson, with a view to put an end to such conversation, desired the minutes of the last vestry meeting to be read by the vestry clerk, whereupon the vestry clerk, or a person officiating for him, quitted his customary place by the side of the rector, and went and read the said minutes by the side of you the said Alexander McMath; and the reading being finished, you, the said Alexander McMath interrupted the said Reverend H. B. Wilson, when he was proceeding to put the question, which you yourself did, and the said Reverend H. B. Wilson thereupon, and to avoid further contention, retired from the room, and that you thereby dispossessed the said Reverend H. B. Wilson of the office of chairman or president of the said vestry meeting, in manifest violation of the laws, statutes, canons, and constitutions ecclesiastical of this realm, and what is fitting and right to be observed and of custom is observed in and throughout the whole realm touching and concerning the premises, and to the evil example of others; and this was, &c.



Also we article and object to you, the said Alexander **Fourth.**  
McMath, that you you were and at present are of the  
parish of Saint Mary Aldermary, London, in the  
Deanery of the Arches, London, and peculiar and im-  
mediate jurisdiction of the Cathedral and Metropoli-  
tical Church of Christ, Canterbury, and therefore  
manifestly subject to the jurisdiction of this court, and  
that by reason of the premises set forth in the next  
preceding article, you have incurred ecclesiastical cen-  
sure and have not as yet undergone any punishment for  
the same; and this, &c.

Also we article and object to you, the said Alexander **Fifth.**  
McMath, that it hath been and is rightly and duly  
complained by or on the part and behalf of the said  
Reverend H. B. Wilson, Doctor in Divinity, the pro-  
moter in this cause, of and concerning all and singular  
the premises to us, the Dean or Commissary aforesaid,  
and to this court; and this was, &c.

Also we article and object to you, the said Alexander **Sixth.**  
McMath, that all and singular the premises were and  
are true, public, and notorious, of which legal proof  
being made, the party promonent prays right and jus-  
tice to be effectually done and administered in the pre-  
mises, and that you may be duly, and according to the  
exigency of the law, punished and corrected for your  
excess and temerity in the premises, and admonished to  
refrain from the like behaviour for the future, and also  
that you may be condemned in the costs of this suit  
made and to be made on the part and behalf of the said  
Reverend H. B. Wilson, Doctor in Divinity, the pro-  
movent, and compelled to the due and effectual pay-  
ment thereof.

*Articles.*

Articles  
against a lay-  
man for  
brawling.

First.

In the name of God, amen, &c.

We article and object to you, the said George Clarkson, that by the laws, statutes, and canons ecclesiastical of this realm, all and every the parishioners and inhabitants of and within every parish within the said realm, and all other persons whatsoever, ought, when they repair to their parish church, or any other church or chapel, upon any occasion whatever, to demean him, her, or themselves orderly, soberly, peaceably, and reverently therein, as becometh the house of God, and not to chide, brawl, scold, quarrel, or make any disturbance whatever therein, upon pain of ecclesiastical censure, to be inflicted according to the offence, and we refer to the said laws, statutes, canons, and constitutions ecclesiastical; and this was and is true, public, and notorious, and we article and object to you everything in this and the subsequent articles contained jointly and severally.

Second.

Also we article and object to you, the said George Clarkson, that in and by an Act of Parliament passed in the fifth and sixth years of the reign of Edward the Sixth, some time King of England, it is enacted in the words following, to wit, "that if any person whatsoever shall at any time after the first day of May next ensuing, by words only, quarrel, chide, or brawl in any church or churchyard, then it shall be lawful unto the ordinary of the place where the same offence shall be done and proved by two lawful witnesses, to suspend every person so offending, that is to say, if he be a layman, *ab ingressu ecclesiæ*; and if he be a clerk, from

the ministration of his office for so long time as the said ordinary shall, by his discretion, think meet and convenient, according to the fault ;” and we article and object the said Act of Parliament to be a public act ; and this was and is true, and we article and object as before.

Also we article and object to you, the said George Third. Clarkson, that in the afternoon of Sunday, the 7th day of May, in the year of our Lord 1826, and during the time of Divine service in the parish church of the parish of Minster aforesaid, you the said George Clarkson did disturb the congregation then and there assembled in manner and form following, that is to say : you the said George Clarkson did, at and during the performance of Divine service as aforesaid, in the said church, and in the face of the said congregation then and there assembled, hand or otherwise present to William Champion, the parish clerk of the said parish, a written notice, for the purpose of him the said William Champion reading the same aloud in the same church previous to the commencement of the sermon, which notice was in the words or to the effect following, that is to say, “ Kent. Parish of Minster, in the Isle of Sheppy, 6th May, 1826. Notice is hereby given, that a vestry meeting will be holden in the parish church on Thursday, the 11th instant, at four o’clock in the afternoon, for the special purpose of taking into consideration the best means of resisting the proceedings which have been adopted for the recovery of Easter offerings in the parish, and preventing similar proceedings in future.—EDWARD BIGGS, Churchwarden ; GEORGE CLARKSON, Overseer ;”—that the said William Champion, upon the said notice being by you handed or

presented to him, for him to read the same aloud as aforesaid, communicated the same to the Reverend Henry Turmine, Clerk, the Perpetual Curate of the said parish, who was then and there actually engaged in the performance of Divine service to the said congregation then and there assembled as aforesaid, whereupon the said Reverend Henry Turmine, who had received no previous intimation of or respecting any such notice, directed the said William Champion not to read the same, and in consequence thereof the said William Champion did not read aloud the said notice at and during the time of Divine service as by you required as aforesaid; and we further article and object that you, the said George Clarkson, did thereupon, after the sermon, but previous to the said Reverend Henry Turmine, Clerk, having left the pulpit, and before the congregation then and there assembled had left the said church after the conclusion of the same, stand upon the seat of your pew, and not regarding the sacredness of the place where you were, and without any lawful authority whatever, did then and there yourself commence reading aloud a notice, in the words or to the precise effect of the written notice before recited, and read the said notice aloud to the conclusion of the same, and did thereby irreverently and indecently chide and brawl by words, in the presence and hearing of the minister and congregation assembled in the said church as aforesaid; and did, by so handing or otherwise presenting the said notice to the said William Champion, the parish clerk, for the purpose of reading the same aloud as aforesaid, and afterwards by yourself reading the same aloud as aforesaid, create a great disturbance in the said church, and give great

offence to the said congregation then and there assembled, and you the said George Clarkson did then and there irreverently demean and express yourself, as or to the purport and effect aforesaid, in violation of the laws, statutes, canons, and constitutions ecclesiastical of this realm ; and this was, &c.

Also we article and object to you, the said George Clarkson, in part supply of proof of the premises in the next preceding article mentioned and set forth, and we exhibit and hereto annex, and will to be here read and inserted, and taken as part and parcel hereof, a certain paper writing, marked with the letter A; and we article and object the same to be and contain the very notice so as in the said article set forth, handed, or otherwise presented by you to the said William Champion, in the parish church of Minster aforesaid; and we further article and object, that the words and names "George Clarkson, Overseer," set and subscribed to the said notice, were and are of the proper handwriting of you the said George Clarkson, and are so known or believed to be by divers persons of good credit and reputation, who have frequently seen you write, and also write and subscribe your name, and that George Clarkson who so subscribed the said notice, and you the said George Clarkson, the party in this cause, were and are the same person and not divers; and this was, &c. Fourth.

Also we article and object to you, the said George Clarkson, that you are a layman, of Sheerness, in the parish of Minster, in the island of Sheppy, county of Kent, and diocese of Canterbury aforesaid, and therefore, and by reason of the premises and of the letters of request presented to and accepted by us in this Fifth.

cause, were and are subject to the jurisdiction of this court, and have not yet undergone any punishment for the same ; and this, &c.

Sixth. Also we article and object to you, the said George Clarkson, that the said Reverend Henry Turmine, Clerk, the promoter of our office, was, at the time in the third of these articles pleaded, and now is, perpetual curate of the parish of Minster, in the island of Sheppy, county of Kent, and diocese of Canterbury, and has rightly and duly complained to us the judge aforesaid and to this court ; and this, &c.

Seventh. Also we article and object to you, the said George Clarkson, that all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, or report, of which legal proof being made to us the judge aforesaid, and to this court, we will that you the said George Clarkson, for your excess and temerity in the premises, be pronounced, decreed, and declared to have committed an offence against the ecclesiastical laws of the realm, and to have incurred the penalty of the aforesaid statute and the censure of the law, and that you be duly, and according to the exigency of the law, corrected and punished for the same, and admonished to refrain from the like behaviour for the future, and also that you be condemned in the costs made and to be made on the part and behalf of the said Reverend Henry Turmine, and compelled to the due payment thereof.

*Articles.*

In the name of God, amen, &c.

We article and object to you, the said A. B., that for these ten, twenty, thirty, forty, fifty, and sixty years past, and from time immemorial, and long beyond the memory of any man now living, there hath been and now is a parish and parish church for the use of the parishioners and inhabitants of the said parish, called and known by the name of Saint                      in within the diocese of                      , and that there hath also been and now is a churchyard of and belonging to the said parish church, which churchyard abuts, on the north, upon lands belonging to you the said A. B., whereon a tenement formerly stood which formed the northern boundary or fence of the said churchyard, but which tenement, many years since, was pulled down, and a wall formed or erected on the line of such boundary or fence; and this was and is true, public, and notorious, and we article and object to you the said A. B. everything in this and the subsequent articles contained jointly and severally.

Articles  
against a  
layman for  
pulling down  
the wall of a  
churchyard.  
First.

Also we article and object to you, the said A. B., that in the year 1579 a terrier was had and made of all such lands as did appertain unto the parsonage and parish of Saint                      aforesaid, and such terrier was entered in a certain book of terriers, made in or about the said year 1579, which is deposited and remains on record in the Registry of the Consistorial and Episcopal Court of                      , and that in such terrier it is mentioned and set forth that there was appertaining unto the said parish the churchyard, being

Second.

the same churchyard pleaded in the next preceding article ; and this was and is true, &c.

Third.

Also we article and object to you, the said A. B., and in part supply of proof of the premises in the next preceding article mentioned, and to all intents and purposes in the law whatsoever, exhibit and hereto annex, and will that the same be here read and inserted, and taken as part and parcel hereof, a certain paper writing, marked No. 1; and we article and object to you, the said A. B., that the same is and contains a true copy of the said terrier in the next preceding article mentioned ; that the same hath been faithfully extracted from the aforesaid book of terriers, now remaining in the Registry of the Consistorial and Episcopal Court of \_\_\_\_\_, and hath been carefully collated with the original terrier therein and found to agree therewith ; and that the said book will be produced at the examination of the witnesses in this cause, and at the hearing thereof, if required ; and this, &c.

Fourth.

Also we article and object to you, the said A. B., that the aforesaid wall, which formed the northern boundary or fence of the said churchyard, has been lately, to wit, in or about the month of February, in the present year, 18\_\_\_\_, pulled down and removed by or by the direction of you the said A. B., whereby the said churchyard hath been laid open to a certain piece or parcel of land belonging to you the said A. B., whereon the said messuage or tenement which heretofore, as aforesaid, formed the northern boundary of the said churchyard, formerly stood, by which means the said churchyard is desecrated, and the graves and tombstones therein are subject to mutilation and destruction ; and this, &c.



Also we article and object to you, the said A. B., Fifth.  
 that at a visitation of the Venerable E. F., Doctor in  
 Divinity, Archdeacon of the archdeaconry of \_\_\_\_\_,  
 held in the cathedral church of \_\_\_\_\_, on or about  
 the 15th day of May, in the present year of our Lord,  
 the said C. D., the churchwarden of the said parish of  
 Saint \_\_\_\_\_, did make a presentment to the said  
 archdeacon, in which, amongst other things, he pre-  
 sented that the said northern boundary or fence of the  
 said churchyard had been wholly removed, by or by the  
 directions of you, the said A. B., and that the said  
 churchyard was desecrated, and the graves and tomb-  
 stones therein were subject to mutilation and destruc-  
 tion, by reason of the deficiency of the said northern  
 fence or boundary ; and this was, &c.

Also we article and object to you, the said A. B., and, Sixth.  
 in part supply of proof of the premises in the next pre-  
 ceding article mentioned, exhibit and hereto annex, and  
 will that the same be here read and inserted, and taken  
 as part and parcel hereof, a certain paper writing,  
 marked No. 2 ; and we article and object to you, that  
 the same is and contains a true and correct copy of the  
 aforesaid presentment in writing, mentioned in the next  
 preceding article ; that the same hath been carefully  
 collated with the original, remaining in the Registry of  
 the Archidiaconal Court of \_\_\_\_\_, and found to  
 agree therewith, and that the said original presentment  
 will be produced at the examination of the witnesses in  
 this cause, and at the hearing thereof if required ; that  
 all and singular the contents thereof were and are true,  
 and that A. B. therein mentioned, and you, the said  
 A. B., were and are one and the same person, and not  
 divers ; and this, &c.

Seventh.

Also we article and object to you, the said A. B., that on or about the 17th day of June, in this present year, the said C. D., as churchwarden of the parish and parish church of Saint                      aforesaid, gave notice, in writing, to you the said A. B., to erect and build, within one month, calendar month, from the said day of the date of the said notice, a good and substantial wall or fence, upon the line of the aforesaid ancient boundary or fence, of a proper and sufficient height, in lieu and stead of the wall so pulled down and removed by you or by your direction as aforesaid, and did also further give you notice in writing that, in case you neglected or refused so to do, within the time aforesaid, then that, at the expiration thereof, he, the said C. D., would take such proceedings against you, to compel you so to do, as the law might direct or require, which notice was personally served upon or sufficiently made known to you; but that, notwithstanding such notice and repeated requests to the same effect, you the said A. B. have neglected to restore the wall which you have caused to be pulled down, or to erect and build any wall or fence between the said churchyard and your aforesaid lands, and the said churchyard continues subject to desecration as before mentioned; and this, &c.

Eighth.

Also we article and object to you, the said A. B., that the said C. D., the party promoting this cause, was, on or about the                      day of                      , duly admitted into the office of churchwarden of the said parish of Saint                      in the city of                      for one whole year from thence next ensuing, having been duly elected to the said office, and having made the usual declaration required by law, and for and as

churchwarden of the said parish was and is commonly accounted, reputed and taken to be; and this was, &c.

Also we article and object to you, the said A.B., Ninth.  
that you were and are of the said city and diocese of \_\_\_\_\_, and therefore and by reason of the premises were and are subject to the jurisdiction of this court; and this, &c.

Also we article and object to you, the said A.B., Tenth.  
that the said C.D., the party promoting this cause, hath rightly and duly complained of and concerning all and singular the premises, to us, the vicar-general, and official principal aforesaid, and to this court; and this, &c.

Also we article and object to you, the said A.B., Eleventh.  
that all and singular the premises were and are true, public, and notorious, and hereof there was and is a public voice, fame, and report, of which legal proof being made, we will, that right and justice be effectually done and administered therein, and that you, the said A.B., be by canonical censures monished to restore the said wall so as aforesaid pulled down by you or by your direction, or to erect and build a good and substantial wall or fence of a proper and convenient height, upon the line of the ancient northern boundary or fence of the said churchyard, in lieu and stead of the wall pulled down and removed by you or by your directions as aforesaid, and be condemned in all the lawful costs made and to be made in this cause, on the part and behalf of the said C.D., by us, or our definitive sentence or final decree to be made and interposed in this behalf.

*Articles.*

Articles  
against  
church-  
wardens for  
neglecting to  
repair a  
church.  
First.

In the name of God, amen, &c.

We article and object to you, the said John Horner Brand, and John Philpot, that for these ten, twenty, thirty, forty, fifty, sixty years last past, and for time immemorial and long beyond the memory of any man now living, there hath been and still is a parish and parish church for the use of the parishioners and inhabitants called and known by the name of Saint Mary Thackstead, otherwise Thaxted, in the county of Essex, within the archdeaconry of Middlesex, and diocese of London, with, at the west-end appendant to or forming part thereof, a tower, and that during all the times aforesaid, and until the 15th day of June and the 16th day of December, in the year 1814, when the same was blown or fell down, or was destroyed in manner as hereinafter set forth, there was a spire built on and from the said tower, with a vane on the top of the said spire; and this, &c.

Second.

Also we article and object, &c., that the said church, tower, and spire, were all built of freestone, and of uniform style or character of architecture; that from the summit of the vane of the said spire to the ground floor of the said tower was a perpendicular height of about sixty yards and one foot; the height from the spring of the said spire from the tower, to the top of the vane forming thirty-three yards one foot of such whole height. That on the 15th day of June, in the year 1814, the upper part of the said spire, to the extent of about forty feet from the top, was injured by lightning; that the churchwardens, parishioners, and inhabitants of the

said parish, undertook the repairs thereof, and for that purpose raised a scaffold, but did not complete the necessary repairs before the winter came on, and left the said scaffold standing, that by the effect of the weight of the said scaffold, and of the snow and ice which had been suffered to accumulate thereon, or of certain defects which had taken place in the said tower, on the 16th day of December, in the said year, the remainder of the said spire, to within twenty-five feet of its junction with the said tower, was blown or fell down upon the roof of the said church, and much injured the same and the body of the said church; that the churchwardens, parishioners, and inhabitants, have duly repaired the body and roof of the said church, but have refused or neglected to rebuild, reinstate, or repair the said spire, although thereunto duly admonished at the archidiaconal visitation of the said parish, and often thereunto intreated and requested by or on behalf of the said Right Honourable Charles Viscount Maynard, Baron of Estaines, the patron of the said church, and impropriator of the great tithes of the said parish, and a proprietor therein as aforesaid, in manifest violation of the laws, statutes, canons, and constitutions ecclesiastical of this realm, and what is fitting and right to be observed, and of custom is observed, touching and concerning the premises, and to the evil example of others; and this, &c.

Also we article and object to you, the said, &c. and Third.  
in part supply of proof of the premises in the next preceding article objected and set forth, and to all other intents and purposes in the law, whatever, exhibit hereunto, annex, and will the same to be here read and inserted, and taken as part and parcel hereof, a certain

print or engraving marked with the letter A; that the same is and contains a true and correct representation of the said church, tower, and spire, and of the style or character of their build or architecture, as the same stood prior to the accident occurring to the said spire on the 15th day of June, 1814, and the 16th day of December in the said year, as in the said article is objected and set forth, with, at the lines drawn across the said spire, a true and correct representation of the parts which fell down, or were destroyed at each of the said times; and this, &c.

Fourth.

Also we article and object to you, &c. that you were and at present are churchwardens and parishioners and inhabitants of the parish of Saint Mary, Thackstead, otherwise Thaxted, in the county of Essex, and diocese of London, and therefore manifestly subject to the jurisdiction of this court; and that by reason of the premises set forth in the next preceding articles, you have incurred ecclesiastical censure, and have not as yet undergone any punishment for the same, and are legally bound and compellable to rebuild, reinstate, or repair the said spire of the said church; and this, &c.

Fifth.

Also we article and object, &c. that it hath been and was and is rightly and duly complained by or on the part and behalf of the said Right Honourable Charles Viscount Maynard, Baron of Estaines, at the Mount in the county of Essex, the patron or person having the advowson of the said church of Saint Mary, Thaxted, and impropriator of the great tithes of the said parish, and also a proprietor therein, the promoter in this cause, of and concerning all and singular the premises to us the vicar-general and official principal aforesaid, and to this court; and this, &c.

Also we article and object, &c. that all and singular Sixth.  
 the premises were and are true, public, and notorious,  
 of which legal proof being made, we will that right and  
 justice be effectually done and administered in the pre-  
 mises, and that you may be duly, and according to the  
 exigency of the law, punished and corrected for your  
 excess, temerity, and neglect in the premises, and  
 admonished to refrain from the like behaviour for the  
 future, and to rebuild, reinstate, or repair the said spire  
 of the said parish church of Saint Mary, Thackstead,  
 otherwise Thaxted, aforesaid, and also that you may be  
 condemned in the costs of this suit, made and to be  
 made on the part and behalf of the said Right Honour-  
 able Charles Lord Viscount Maynard, the promovent,  
 and compelled to the due and effectual rebuilding, rein-  
 stating, or repairing the said spire, and payment of the  
 said costs by us the vicar-general and official principal  
 aforesaid and our office in that behalf.

### *Articles.*

In the name of God, amen, &c.

We article and object to you, the said Job Cooper and  
 Charles Wainwright, jointly and severally, that at or  
 shortly after Easter, in the present year 1839, you  
 were respectively elected and chosen as churchwardens of  
 the parish of Shepton Mallett, in the county of Somer-  
 set, to wit, you, the said Job Cooper, by and on behalf  
 of the parishioners of the said parish, and you the said  
 Charles Wainwright, by and on behalf of the said  
 Reverend William Provis Trelawny Wickham, the  
 minister of the said parish, and you respectively  
 accepted such office and made a declaration that you

Articles  
 against  
 church-  
 wardens for  
 neglecting  
 to provide  
 bread and  
 wine for  
 the Holy  
 Commu-  
 nion.

First.

would faithfully and diligently perform the duties thereof; and we further article and object to you the said Job Cooper and Charles Wainwright, jointly and severally, that at Easter aforesaid, or shortly afterwards, you respectively entered upon the execution of the said office, and have ever since respectively acted as churchwardens of the said parish, and for and as such churchwardens were and are commonly accounted, reputed and taken to be; and this, &c.

**Second.** Also we article and object to you, the said Job Cooper and Charles Wainwright, and to each of you, that by the laws, statutes, canons, and constitutions ecclesiastical of this realm, and more especially by the 20th canon of 1603, the churchwardens of every parish, against the time of every communion, are required at the charge of the parish to provide a sufficient quantity of bread and wine for the communicants, under pain of ecclesiastical censures to be inflicted, and we refer to the said laws, statutes, canons, and constitutions ecclesiastical; and this was, &c., and we article and object as before.

**Third.** Also, &c., that notwithstanding the premises set forth in the next preceding article, you have on one or more occasions refused or neglected to provide bread and wine at the charge of the parish, against the time of the Holy Communion, when duly advised and directed so to do; and, &c.

**Fourth.** Also, &c., that it having been intended by the minister of the said parish of Shepton Mallett, to administer on Sunday, the third day of November, in the present year 1839, the sacrament of the Holy Communion in the church of the said parish, he the said minister gave public notice of such his intention, to wit, on the pre-



vious Sunday in the said parish church; and we further article, &c., that you were respectively cognizant of such intention of the said minister, to administer the Holy Communion, on Sunday, the third day of the said month of November as aforesaid, and of the aforesaid previous public warning given thereof as aforesaid, and moreover that you were respectively desired and required by the said Reverend William Provis Trelawny Wickham, or on his behalf, to provide a sufficient quantity of bread and wine against such Holy Communion; and, &c.

Also, &c., that you have respectively admitted and confessed that you, and each of you, were fully aware that it was the intention of the minister of the said parish of Shepton Mallett to administer the Holy Communion in the said parish church, on Sunday, the third day of the month of November, as aforesaid; and also that previous warning had been publicly given in the said parish church as aforesaid, by the minister of the said parish, of his intention to celebrate and administer the Holy Sacrament; and, &c. Fifth.

Also &c., we exhibit &c., three paper writings marked A, B, and C, and we do article and object the said paper writing marked A, to be and contain a true copy of a certain letter or notice written, addressed, and sent to you and each of you as churchwardens of the said parish of Shepton Mallett, by the said Reverend William Provis Trelawny Wickham, as rector of the said parish, and which letter or notice was, to wit on or about the 30th day of the said month of October, 1839, being the day of the date thereof, duly delivered to and received by you and each of you. And we do further article and object the said paper writing marked B, to Sixth.

be an original note or letter written, addressed, and sent, on or about the said 30th day of October, 1839, by you, the said Job Cooper, to Mr. F.

Byrt, the clerk of the said parish, being in answer or referring to the aforesaid letter or notice of the said William Provis Trelawny Wickham. And we do further article and object the said paper writing marked C, to be an original letter, written, addressed, and sent by you the said Charles Wainwright, the same being also in answer to or referring to the said letter or notice of the said Reverend William Provis Trelawny Wickham, and that the said two paper writings were duly received by the said F. Byrt; and this, &c.

Seventh.

Also, &c., that the whole body, series, and contents of the said paper writing or exhibit B, and the subscription thereto, and the superscription thereon, were and are of the proper handwriting and subscription of you, the said Job Cooper, and are so well known or believed to be by divers persons of good credit and reputation who have frequently seen you, the said Job Cooper, write, and write and subscribe your name, and that the whole body, series, and contents of the said paper writing or exhibit C, and the subscription thereto, and the superscription thereon, were and are of the proper handwriting and subscription of you, the said Charles Wainwright, &c.

Eighth.

Also, &c., that notwithstanding the premises in the several preceding articles mentioned, bread and wine were not provided by you for the celebration of the Holy Communion in the said parish church on Sunday, the 3rd day of the month of November aforesaid, and that, in consequence of such your neglect, the Holy Sa-

crament could not be administered on that day to divers persons who proposed to partake of it, and were in attendance for that purpose; and this, &c.

Also, &c., that you have not yet undergone any Ninth.  
punishment for your offences aforesaid, but are by us  
and our authority to be canonically corrected and  
punished; and this, &c.

Also, &c., that you were and are respectively of the Tenth.  
parish of Shepton Mallett aforesaid, &c.

Also, &c., that of and concerning all and singular the Eleventh.  
premises, &c.

Also, &c., we will that you, and each of you, be ca- Twelfth.  
nonically punished and corrected according to the  
exigency of the laws, and also be condemned in the costs  
of suit, &c.

If the defendant is advised by his counsel to oppose the admission of these articles; viz., to demur to the legal sufficiency of the facts therein contained, even if substantiated, to establish a case against him, a notice of such opposition is given to the adverse proctor and to the officers of the registry. On the following court-day the objections taken to the articles are enforced and rebutted by the counsel of each party; and the judge will afterwards, according to the strength of their respective arguments, either admit or reject the plea, or direct a part of it to be reformed or amended. In the latter case, unless the reformation meets the approval of the defendant and his counsel, the same course of opposition is pursued as in the former case; or, if no objection can be taken to the articles, they are admitted, *modo et formâ*, in the same state as they were originally offered.

The articles having been admitted, the proctor for the defendant is bound to give an issue, either in the negative or the affirmative forthwith. If the issue (which is verbal, and is recorded by the registrar in the assignation book of the court,) be in the affirmative, the facts on which the accusation is based being thereby confessed, there is no necessity for examining witnesses and for the production of proof of any other kind, and the suit is then assigned for sentence summarily and at once.

But to do this, the defendant's proxy must expressly authorize his proctor for the purpose. Instead, therefore, of the expressions appearing in the form of proxy before given, the authority to the proctor should be "to pray articles, &c., to give an affirmative issue thereto, and to submit to the judgment and censure of the court," &c.

The party may appear himself personally in court, and give the issue without the intervention of his proctor, but as this would be a constructive revocation of the appointment of the latter, he must expressly declare that no revocation is intended by him; in which case the reservation is recorded by the registrar, and the proctor may afterwards proceed to the conclusion of the suit, by virtue of his original proxy, and without any fresh power from his client.

If a negative issue be given to the articles, (and which is also termed contesting the suit negatively,) the promoter must then be prepared to produce his witnesses in support of his case.

For this purpose, a certain period of time is allowed, called the term probatory, within which all

proof must be collected, unless cause to the contrary can be shewn, to explain the delay, and in that case an extension of the term is allowed, on application to the court by motion or affidavit. The answers of the defendant cannot be taken in these suits under the stat. of Car. II., (13 Car. c. 12, s. 4.)

If the witnesses of the promoter reside in town, they are respectively produced before a surrogate of the court, at his chambers, and are sworn and monished to attend their examination and cross-examination, when required, by the examiner appointed for the purpose.

The witnesses having been thus produced and sworn, are examined separately in secret by the examiner, both in chief and on interrogatories. The former examination is verbal, the questions being framed from the words of the plea, and the latter on written questions reduced into a regular form.

If the witnesses reside in the country or abroad, a commission or requisition issues for the purpose of taking their evidence.

After all the evidence is taken, and the term probatory has expired, publication will pass as a matter of course on the depositions in the cause; the only assignation being on the defendant to plead exceptively to the character of the witnesses.

And if after a perusal of the witnesses' depositions, the proctor for the defendant should be advised to waive an allegation of this kind, the cause may be then concluded and assigned for sentence.

If it is the intention of the defendant to counterplead, he should either assert, or actually bring in an allegation responsive to the articles, on the day that publication is

prayed by the adverse proctor. This step prevents the decree of publication, and keeps the cause open.

The allegation having been brought in, either on the day it was asserted, or on the following court-day, the same proceedings are followed in respect of its admission as in the case of the articles. The general form of this plea may be seen in the course of these pages, and I therefore give no example of it here, the facts pleaded varying, of course, according to circumstances.

The same method is observed in regard to the evidence taken on the allegation as on the articles.

No issue is given to an allegation; but the answers, on oath of the adverse party, must be given to each article or subdivision of the plea. When publication is prayed by the defendant's proctor on the evidence taken on his allegation, a further plea of that kind may, if necessary, be filed on behalf of the promoter, though this is seldom requisite. If no such allegation is offered in the principal cause, publication passes, and both proctors are assigned to propound all facts by the next court. On that day each proctor may file an allegation exceptive to the testimony of the witnesses on the other side. If no such step is taken by them, they will allege, in acts of court, that they give no allegation of that kind, and the judge will then conclude the cause and assign it for sentence on the second assignation.

Nothing then remains but the hearing and judgment.

If the defendant is acquitted, the assignation book of the court records that he is dismissed from the citation and all further observance of justice in the suit. If condemned, it is by a definitive sentence, signed by the judge, or by a final interlocutory decree, which latter is

followed by the service of a written instrument, such as a monition or suspension, in which the terms of the decree are embodied and published. The monition to refrain for the future is the same in its terms, whether against a clergyman or a layman.

The following forms will illustrate the various sentences now in use.

### *Deprivation.*

In the name of God, amen.

Whereas there is depending in the Arches Court of Deprivation  
Canterbury, by virtue of letters of request from the  
Right Reverend Father in God, Edward, by Divine  
permission Lord Bishop of Norwich, a certain cause  
of office promoted by John Kitson, Esq. against the  
Reverend Arthur Loftus, Clerk, Vicar of the United  
Vicarage of Fincham Saint Martin, and Rectory of  
Fincham Saint Michael, and also Vicar of the Vicarage  
and Parish Church of Houghton, otherwise Hel-  
houghton, with the Vicarage of Rainham, Saint  
Martin annexed, all in the county of Norfolk, diocese  
of Norwich, and province of Canterbury, in which the  
said Reverend Arthur Loftus, Clerk, has been convented  
to answer to certain articles, heads, positions, or inter-  
rogatories touching and concerning his soul's health  
and the lawful correction and reformation of his man-  
ners and excesses, and more especially for or in respect  
of his lewd and indecent conduct and conversation, and  
also for or in respect of his having been guilty of the  
foul crime of adultery, fornication, or incontinence, and  
for other irregularities and excesses by him committed.  
And whereas we, Herbert Jenner Fust, Knight, Doctor

of Laws, Official Principal of the said Arches Court of Canterbury, lawfully constituted, rightly and duly proceeding in the said cause, and having heard, seen, and understood, and fully and maturely discussed the merits and circumstances, and diligently searched into and considered of the whole proceedings had and done therein, and observed all and singular the matters and things that by law ought to be observed, and having read the proofs and heard advocates and a proctor on the part of the promoter, and also advocates and a proctor on the part of the said Reverend Arthur Loftus, Clerk, the party proceeded against in the said cause, do hereby decree, pronounce, and declare that the proctor of the promoter has sufficiently proved the articles and exhibits given, objected, and admitted in the said cause, and the proctor of the promoter praying sentence to be given; and the proctor for the said Reverend Arthur Loftus, Clerk, praying justice, therefore we, the said Herbert Jenner Fust, Knight, Doctor of Laws, having first called upon the name of Christ, and setting God alone before our eyes, having maturely deliberated upon the proceedings had in the said cause, and the offences proved exacting by law deprivation of ecclesiastical promotion, have thought fit to pronounce, and do accordingly hereby pronounce, decree, and declare that the said Reverend Arthur Loftus, Clerk, by reason of the premises, ought by law to be deprived of all his ecclesiastical promotions within the said province of Canterbury, and especially of the said united vicarage of Fincham Saint Martin, and rectory of Fincham Saint Michael, and also of the vicarage and parish church of Holghton, otherwise Helhoughton, with the vicarage of Rainham Saint Martin annexed, and all



profits and benefits of the said united vicarage of Fincham Saint Martin, and rectory of Fincham Saint Michael, and also of the vicarage and parish church of Holghton, otherwise Helhoughton, with the vicarage of Rainham Saint Martin annexed, and all profits and benefits of the said united vicarage of Fincham Saint Martin, and rectory of Fincham Saint Michael, and also of the vicarage and parish church of Holghton, otherwise Helhoughton, with the vicarage of Rainham Saint Martin annexed, and of any other ecclesiastical promotions within the said province of Canterbury whereof he may be possessed, and of and from the glebe, fruits, tithes, rents, salaries, and all other ecclesiastical dues, rights, and emoluments whatsoever belonging and appertaining to his said ecclesiastical promotions, or any other ecclesiastical promotions within the said province of Canterbury whereof he is possessed, and we do deprive him thereof accordingly, by this our definitive sentence or final decree, which we read and promulge by these presents, and do also condemn the said Reverend Arthur Loftus, Clerk, in the lawful costs made and to be made in the said cause, on the part and behalf of the said John Kitson, the promoter of these presents.

### *Inhibitory Sentence.*

In the name of God, amen.

Whereas there is now depending in the Arches Court of Canterbury, by virtue of letters of request, from the Right Reverend Father in God, by Divine permission Lord Bishop of \_\_\_\_\_, a certain cause of our office, promoted and brought by E\_\_\_\_\_ F\_\_\_\_\_, Esq., against the Reverend

Sentence inhibiting a clerk from the exercise of the ministry.

A—— B——, of the parish of , in the city and county of and diocese of , and province of Canterbury, Clerk, a minister in holy orders of the United Church of England and Ireland, but not holding any preferment therein, in which the said Reverend A—— B——, Clerk, has been convented to answer to certain articles, heads, positions, or interrogatories, to be administered to him by virtue of our office, touching and concerning his soul's health and the lawful correction and reformation of his manners and excesses, and touching and concerning the degradation, deprivation, or suspension of him, the said A—— B——, a Clerk in Holy Orders, from the ministry, and from the performance of all clerical functions whatever within the province of Canterbury, by reason of his having been convicted, at the general quarter sessions of the peace of our Lady the Queen, holden at the , in and for the said city and county of on the day of 18 , of having, in the parish of afore-said, in the city and county of aforesaid, wickedly and unlawfully solicited, invited, and endeavoured to persuade one C—— D—— to permit and suffer him, the said A—— B—— to commit that detestable and abominable crime called buggery with the said C—— D——, against the order of nature, and against the peace of our Sovereign Lady the Queen, her crown and dignity, causing great scandal to the Church and to his holy orders; and whereas we, Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the said Arches Court of Canterbury, lawfully constituted, rightly and duly proceeding in the said cause, and having heard, seen, understood, and

maturely and fully discussed the merits and circumstances, and diligently searched into and considered of the whole proceedings had and done therein and observed all and singular the matters and things that by law ought to be observed, and having read the articles and exhibits given in, objected, and admitted against the said Reverend A—— B——, Clerk, to which an affirmative issue has been given in the said cause, on the part and behalf of the said Reverend A—— B——, Clerk, and having heard advocates and proctors thereon, do hereby pronounce, decree, and declare that the proctor of the promoter of our office has sufficiently proved the articles and exhibits given, objected, and admitted in the said cause; and the proctor of the said promoter praying sentence to be given, and the proctor for the said Reverend A—— B—— praying justice, therefore we, the said Herbert Jenner Fust, Knight, Doctor of Laws, having first called upon the name of Christ, and setting God alone before our eyes, having maturely deliberated upon the proceedings had in the said cause, and the offences sufficiently proved and admitted exacting by law inhibition from the exercise of the ministry and all discharge and function of his clerical office, and the execution thereof, within the province of Canterbury, we have thought fit to pronounce, and do accordingly pronounce, decree, and declare, that the Reverend A—— B—— ought by law to be inhibited from the exercise of the ministry, and from all discharge and function of his clerical office, and the execution thereof, that is to say, from preaching the word of God and administering the Sacraments, and celebrating all other duties and offices whatsoever within the province of Canterbury; and we

do strictly inhibit him therefrom accordingly, under pain of the law, and contempt thereof, by this our definitive sentence and final decree, which we read and promulge by these presents; and we also condemn the said Reverend A—— B——, in the lawful costs made and to be made in the said cause, on the part and behalf of the said E—— F——, Esquire, the promoter of our said office, by these presents.

### *Suspension.*

*Suspension ab officio et beneficio.*

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular, rectors, vicars, chaplains, curates, and clerks, whomsoever and wheresoever, in and throughout the whole province of Canterbury, but more especially the churchwardens of the parish of Thakeham otherwise Thakeham Saint Mary, in the county of Sussex, diocese of Chichester, and province of Canterbury, greeting.

Whereas we rightly and duly proceeding in a certain cause of our office, voluntarily promoted and brought in virtue of letters of request from the Right Reverend Father in God, Ashurst Turner, by Divine permission, Lord Bishop of Chichester, by the Reverend John Trower, Clerk, against the Reverend John Hurst, Clerk, Rector of the Rectory and parish church of Thakeham, otherwise Thakeham Saint Mary, aforesaid, to answer to certain articles, heads, positions, or interrogatories, administered to him by virtue of our office, touching and concerning his soul's health, and the lawful correction and reformation of his manners and excesses, and

more especially for or in respect of his profane cursing and swearing, and lewd and indecent conduct and conversation; and also for or in respect of his having been guilty of the foul crime of adultery, fornication, or incontinence, and for other irregularities and excesses, by him committed, did on the day of the date of these presents, by our interlocutory decree having the force and effect of a definitive sentence in writing, decree the said Reverend John Hurst, Clerk, to be suspended for the space of three years, (from the time of publishing the suspension for that purpose in the manner hereinafter set forth,) from the discharge and execution of all the functions of his clerical office, that is to say, from preaching the word of God, administering the sacraments, and performing all the duties of such his clerical office, in the said parish and parish church, and elsewhere within the province of Canterbury, and from receiving any of the profits and benefits of the said rectory and benefice, that is to say, from receiving and taking the fruits, tithes, rents, profits, salaries, and other ecclesiastical dues, rights, and emoluments whatsoever, belonging and appertaining to the said rectory and benefice, and did suspend the said Reverend J. Hurst accordingly, and did condemn him in the costs of the said suit, and did order and decree that at the expiration of the said three years, the said Reverend J. Hurst do and shall exhibit and leave in the registry of the said court, a certificate, under the hands of three beneficed clergymen in his vicinity, of his good behaviour and morals during the time of his suspension, and that the said certificate be exhibited and approved of by the said court before such suspension be taken off or relaxed, and that the said suspension shall continue in full force, notwithstanding the expiration of the afore-

said term of three years, until the aforesaid certificate shall be so exhibited and approved of, (justice so requiring,) we do, therefore, hereby authorize and empower and strictly enjoin and command you, jointly and severally, that you do on Sunday the 11th day of May, instant, previously to the commencement of Divine service, by affixing or causing to be affixed these presents under seal for some time on the principal door of the church of the said parish of Thakeham, otherwise Thakeham Saint Mary, and by affixing and leaving thereon affixed a true copy hereof, and also by shewing or causing to be shewn these presents under seal, to the said Reverend John Hurst, Clerk, and leaving or causing to be left with him, a true copy hereof, publish and declare the said Reverend John Hurst, Clerk, to have been so suspended as aforesaid, from the discharge and execution of all the functions of his clerical office, that is to say, from preaching the word of God, administering the sacraments, and performing all other duties of such his clerical office in the said parish and parish church, and elsewhere within the province of Canterbury, and from receiving any of the profits and benefits of the said rectory and benefice, that is to say from receiving and taking the fruits, tithes, rents, profits, salaries, and other ecclesiastical dues, rights, and emoluments whatsoever, belonging and appertaining to the said rectory and benefice, under pain of the law and contempt thereof; and what you shall do or cause to be done in the premises you shall duly certify us, our surrogate, or some other competent judge in this behalf, together with these presents.

Given at London, this third day of May, in the year of our Lord 1845.

WM. TOWNSEND, Registrar.

*Certificate of Publication and Service.*

This suspension was duly published in the parish of Thakeham, otherwise Thakeham Saint Mary, in the county of Sussex, diocese of Chichester, and province of Canterbury, on Sunday, the 11th day of May, in the year of our Lord 1845, by affixing the same for some time on the principal door of the church of the said parish, previously to the commencement of divine service on the morning of the said day, and by leaving thereon affixed a true copy hereof, and also by shewing this suspension under seal to, and leaving a true copy hereof with, the within named Reverend John Hurst, Clerk, on the said 11th day of May, at Thakeham aforesaid.

Certificate of  
publication  
and service.

The mode of publication is shewn by the certificate appended to the form last given; it is regulated by the act 1 Vict. c. 45, s. 4, which provides "that no decree relating to a faculty, or any other decree, citation, or proceeding whatsoever in any ecclesiastical court, shall be read or published in any church or chapel during or immediately after Divine service."

The term of suspension usually commences from the day of the publication of the instrument or process, but, under particular circumstances, the court has computed its duration from the day of the decree (*a*).

On the suspension of a clergyman for offences of confirmed and habitual viciousness, such as drunkenness or extreme incontinence, the court always requires, on

(*a*) Cox v. Goodday, 2 Hagg. C. R. p. 142.

the expiration of the term limited for that suspension, a certificate of the good conduct of the party during the intermediate period, from three (generally benefited) clergymen residing in the neighbourhood, and until this is produced the court will not relax the suspension, as it must first be satisfied of the discontinuance of the obnoxious habit (*b*).

This certificate is not on oath, but if untrue, or fraudulently obtained, is open to the objections of the adverse side.

### *Certificate.*

Certificate of  
a clergyman's  
good beha-  
viour during  
suspension.

To the Right Honourable Sir Herbert Jenner, Knight,  
Doctor of Laws, Official Principal of the Arches  
Court of Canterbury.

We, the Reverend A. B. Rector, &c., C. D. Vicar, &c., and E. F. Vicar, &c., do hereby certify and make known that the Reverend Edwin Crane, Clerk, Vicar of the vicarage and parish church of Crowle, in the county and diocese of Worcester, the party proceeded against in the said Arches Court of Canterbury, in a certain cause of office, voluntarily promoted by the Right Reverend Father in God, Robert James, by Divine permission, Lord Bishop of Worcester, and by the decree of the said court suspended, for the space of three years, from the discharge and execution of all the functions of his clerical office, hath, from the time

(*b*) *Watson v. Thorp*, Phill. 1, p. 269; *Saunders v. Davies*, Addams. 1, p. 291; *Burder v. Speer*, Arches Court, Trin. Term, 1841. In a proceeding for brawling, instituted against a clergyman, the court refused to require the certificate mentioned in the text. *Burder v. Langley*, Trin. Term, 1842.



of the said suspension coming into operation, viz., the 10th day of December, in the year 1837, until the present time, resided at his vicarage-house at Crowle aforesaid, and hath been during the whole time personally known to us, and hath during such time demeaned and conducted himself with the utmost regularity and decorum, and as becoming a minister in holy orders; and we do hereby further certify and make known that, in our judgments and opinions, the said Reverend Edwin Crane is deserving of being restored to the discharge and execution of the functions of his clerical office. In witness whereof we have hereunto, this                      day of                      , in the year of our Lord 18                      , subscribed our names.

(Signed)

A. B.

C. D.

E. F.

On the requisite certificate or certificates being brought in and proving satisfactory, the court will, on motion of counsel, decree the suspension to be relaxed, and the party is then restored by such order to his former station and duties.

The following forms are applicable to the cases of laymen :—

*Suspension ab Ingressu Ecclesiæ.*

John Nicholl, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury lawfully constituted, to all and singular rectors, vicars, chaplains, curates, and clerks, whomsoever and

Suspension  
*ab ingressu  
ecclesiæ.*

wheresoever, in and throughout the province of Canterbury, and more especially to the rector, curate, or officiating minister of the parish of Minster, in the island of Sheppy, county of Kent, and province of Canterbury, greeting :

Whereas we, rightly and duly proceeding in a certain cause of our office, promoted by the Reverend Henry Turmine, Clerk, Perpetual Curate of the parish of Minster aforesaid, by letters of request under the hand and seal of the Worshipful Herbert Jenner, Doctor of Laws, Commissary-General of the Most Reverend Father in God, Charles, by Divine Providence, Archbishop of Canterbury, in and through the whole city and diocese of Canterbury, against George Clarkson, of Sheerness, in the said parish, county, and diocese, to answer to certain heads, positions, or articles, objected against him by virtue of our office, concerning the health of his soul and the lawful correction and reformation of his manners and excesses, but more especially for having created a disturbance in the parish church of the aforesaid parish of Minster, during the time of Divine service, and for quarrelling, chiding, and brawling by words in the said church, did, on the day of the date of these presents, by our interlocutory decree, having the force and effect of a definitive sentence, in writing, pronounce, decree, and declare that the said George Clarkson had been guilty of quarrelling, chiding, and brawling in the parish church of Minster aforesaid, as articulate, and did suspend the said George Clarkson *ab ingressu ecclesie*, for the space of one fortnight, to be computed from the time of publishing such suspension in the said parish church of

Minster, and did decree a monition to issue against him, to refrain in future from offending in like manner, and did condemn the said George Clarkson in the costs of the said suit, justice so requiring: We do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, that you, in the parish church of Minster aforesaid, upon the Sunday immediately following the receipt of these presents, previously to the commencement of Divine service, by affixing, or causing to be affixed, on the principal door of the church of the said parish, and by leaving thereon affixed a true copy hereof, and also by shewing or causing to be shewn to the said George Clarkson these presents under seal, and by leaving with him a true copy hereof, denounce and publish the said George Clarkson to be suspended *ab ingressu ecclesie*, for the space of one fortnight from the day of his being so denounced and published; and that you do monish him to refrain in future from offending in like manner, under pain of the law and contempt thereof; and what you shall do in the premises you shall duly certify us, our surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, on the by-day of the Michaelmas Term, to wit, the sixth day of December, in the year of our Lord 1826.

### *Monition to Refrain.*

John Nicholl, Knight, Doctor of Laws, Dean or Commissary of the Deaneries of the Arches, London, Shoreham, and Croydon, the peculiar and immediate jurisdiction of the Cathedral and Metro-

Monition to refrain.

political Church of Christ, Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever, in and throughout the said peculiar jurisdiction, greeting :

Whereas we, rightly and duly proceeding in a certain cause of our office, which was lately depending before us in judgment, between the Reverend H. B. Wilson, Doctor in Divinity, Rector of the parish of Saint Mary Aldermary, London, and peculiar jurisdiction aforesaid, the party promoting the said cause, on the one part, and Alexander McMath, of the same parish and jurisdiction, the party accused and complained of, on the other part, and duly cited to answer to certain articles, heads, positions, or interrogatories, touching and concerning his soul's health and the lawful correction and reformation of his manners and excesses, and more especially for interrupting the said Reverend H. B. Wilson, Rector of the said parish, when he had taken the chair as president at a vestry meeting, held in the vestry-room within the walls of the said parish church, preventing him from exercising the office of chairman or president of the said meeting, and dispossessing him thereof, did, by our final interlocutory order or decree, having the force and effect of a definitive sentence, in writing, pronounce, decree, and declare, that the said Alexander McMath had interrupted the said Reverend H. B. Wilson, Doctor in Divinity, when he had taken the chair, as president, at the vestry meeting held within the walls of the parish church of Saint Mary Aldermary, London, and had prevented him from exercising the office of chairman or president of the said vestry meeting, and dispossessed him thereof, as pleaded and set forth in certain articles given in and

admitted against him in the said cause, and did moreover condemn him in the lawful expenses incurred by the said Reverend H. B. Wilson, Doctor in Divinity, the Rector aforesaid, (as by the acts and records of the said court, reference being thereunto had, will appear ;) and whereas we further, rightly and duly proceeding in the said cause, did decree the said Alexander McMath to be monished that he would refrain from such conduct for the future, justice so requiring : We do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish, or cause to be monished, the said Alexander McMath, that he shall refrain from such conduct for the future, under pain of the law and contempt thereof; and what you shall do, or cause to be done, in and about the premises you shall duly certify us, our surrogate, or other competent judge in this behalf, together with these presents.

Dated at London, the second session of Hilary Term, to wit, Thursday, the 27th day of January, in the year of our Lord 1826.

*Monition to Repair, &c.*

William, by Divine permission, Bishop of London, to  
all and singular, &c.

Monition to  
repair.

Whereas a certain cause or business of the office of the judge was lately depending before the Right Honourable Sir William Scott, Knight, Doctor of Laws, our Vicar-General, and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, between the Right Honourable Lord Viscount Maynard, Baron of Estaines, at the Mount, in the

county of Essex, the patron or person having the advowson of the church, and impropriator of the great tithes of the parish of Saint Mary, Thackstead, otherwise Thaxted, in the same county, and our diocese of London, the party promoting the said cause or business, on the one part, and John Horner Brand and John Philpot, the churchwardens of the said parish, the parties accused and complained of, and against whom the said cause or business was promoted, on the other part, and duly cited to answer to certain articles, heads, positions, or interrogatories, to be administered to them by virtue of the office of the aforesaid judge, touching and concerning their souls' health and the lawful correction and reformation of their manners and excesses, and more especially for refusing or neglecting to rebuild or repair the spire of the parish church of Saint Mary, Thacksted, otherwise Thaxtead, aforesaid; and whereas our vicar-general and official principal aforesaid, rightly and duly proceeding in the said cause or business, having first heard advocates learned in the law therein and proctors on both sides, did, by his final interlocutory order or decree, having the force and effect of a definitive sentence, in writing, pronounce that the spire, heretofore built on and from the tower, situate at the west end of the said parish church of Saint Mary, Thackstead, otherwise Thaxted, and so built of freestone, in an uniform style of architecture with the said church and tower, with a vane on the top of the same, had been destroyed, or had fallen down, (as is pleaded and set forth in the aforesaid articles, with an exhibit or plan thereto annexed, heretofore given in and admitted in this cause or business,) and that the said John Horner Brand and John Philpot had refused

or neglected to repair the said spire, and directed them, the said John Homer Brand and John Philpot, to repair and reinstate the said spire, (as by the acts and records of the said court, reference being thereto had, will appear;) and whereas our vicar-general and official principal aforesaid, further rightly and duly proceeding in the said cause or business, did decree the said John Homer Brand and John Philpot to be monished to the effect hereinafter mentioned, (justice so requiring :) we do therefore hereby authorize and empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish, or cause to be monished, the said John Horner Brand and John Philpot, (whom we do so monish by these presents,) that they repair and reinstate the said spire as heretofore built on and from the tower at the west end of the said parish church of Saint Mary, Thackstead, otherwise Thaxted, of free-stone, in an uniform style of architecture with the said church and tower, and with a vane on the top of the same, which has been destroyed or fallen down, as pleaded and set forth in the aforesaid articles, with an exhibit or plan thereto annexed, under pain of the law and contempt thereof; and what you shall do in the premises you shall duly certify our vicar-general and official principal aforesaid, his surrogate, or other competent judge in this behalf, together with those presents.

Dated at London, the fourth session of Hilary Term, to wit, Wednesday, the 21st day of February, in the year of our Lord 1821, and in the sixth year of our consecration.

## CIVIL SUITS.

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**THE** next division is into causes of instance, or civil suits.

These embrace a great variety of character in their subdivision, and differ greatly from each other, as well in their nature as in the degree of importance which is attached to them. Their classification may be made as follows, viz.:—Ecclesiastical causes, or suits arising on a subject connected with the moral principles or the legal establishment of the Church, such as defamation, the perturbation of a pew or church seat, the subtraction of church rates, the recovery of penalties for non-residence of a clerk, under 1 and 2 Vict. c. 106, the grant of a faculty, &c. 2nd. Matrimonial causes, or suits respecting the conduct of married persons, the validity of the marriage bond, as impeached through an informality in the ceremony, or any civil, physical, or canonical impediment, alimony, &c. 3rd. Testamentary causes, or suits respecting the validity or genuineness of last wills, the subtraction of legacies, &c.; and under this last category may also be included questions regarding the right or interest of persons asserting a title to letters of administration under an admitted intestacy, the calling upon an executor or administrator for an inventory and



account, the allotment or distribution of an intestate's personal estate, the application for permission to sue at common law on an administration bond, (a breach of its conditions being proved,) and the citing an executor to prove a will, or a next of kin to take out letters of administration.

## ECCLESIASTICAL CAUSES.

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### DEFAMATION.

THE Ecclesiastical Courts have jurisdiction in those cases of defamation where the offence charged is not punishable at common law, such words only being cognizable as impute an offence, which itself would be cognizable in such courts (*a*).

Their jurisdiction is therefore now very limited; and the chief occasion in which it is invoked is when an accusation of incontinence has been made against a female. It is not material whether this defamation is in writing or by parole (*b*), nor is it necessary that the word "whore" should be the specific word used; for any word that will, in common and popular acceptation, imply the crime of incontinence, will amount to the same thing (*c*). In the same manner, to allege a person to be a usurer is defamatory, as the statute 13 Eliz. c. 8, expressly saves the ecclesiastical jurisdiction (*d*).

These suits must be commenced within six months from the time when the defamatory words were uttered, by statute 27 Geo. 3, c. 44, s. 1.

<p>(<i>a</i>) Crompton v. Butler, in note, Hagg. C. R. 1, pp. 464-5.</p> <p>(<i>b</i>) Ware, otherwise Tank, v. Johnson, Lec, 2, p. 103.</p>	<p>(<i>c</i>) Crompton v. Butler, ib. p. 465.</p> <p>(<i>d</i>) Ib.</p>
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A citation issues against the defamer, in the following terms, viz. :—

*Citation for Defamation.*

Charles James, by Divine permission, Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting: Citation for defamation.

We do hereby authorize and empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, A. B., of the parish of Saint Bride, Fleet Street, in the city and diocese of London, to appear personally, or by his proctor duly constituted, before the Right Honourable Stephen Lushington, Doctor of Laws, Vicar-General and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after he shall have been served with these presents, if it be a general session, by-day, or additional court-day of our said court, otherwise on the general session, by-day, or additional court-day of our said court then next ensuing, at the hour of the sitting of the court, and there to abide, if occasion require, during its continuance, then and there to answer to C. D., of the parish of , the county of , widow, in a certain cause of defamation or slander, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said A. B.; and what you shall do or cause to be done

in the premises you shall duly certify our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Given at London, this twenty-fourth day of August, in the year of our Lord 1835, and in the eighth year of our translation.

This citation is signed by the promoter's proctor, and is served in the same manner as a citation or decree in a purely criminal cause.

The citation being returned into court, a proxy is exhibited from the promoter by her proctor, authorizing him "to return the same into court, and give a libel in the cause, and take such steps as shall be necessary towards procuring the defendant to be compelled to reclaim and retract the defamatory words, and to be otherwise canonically, and according to the exigency of the law, punished and corrected," &c.

An appearance being given for the party cited, a proxy is filed on his behalf, in which, if he be inclined to make an opposition, an authority is given to his proctor in the following terms; viz. "To appear to the citation and pray a libel; and, in case of the same being given and admitted, then to contest suit negatively, (i. e. give a negative issue thereto,) and to take such steps as shall be necessary towards procuring him to be dismissed from the said citation and all further observance of justice in the cause," &c.

The libel being brought in, a copy is immediately delivered to the proctor of the defendant. It is peremptory on the promoter to file this plea on the day of the defendant's appearance and prayer to that effect. And

if there is any laches in bringing it in on that day, the other party is entitled to be dismissed with his costs (*e*).

The libel is as follows:—

*Libel for Defamation.*

In the name of God, amen. Before you, the Right Honourable Sir William Scott, Knight, Doctor of Laws, Vicar-General of the Right Reverend Father in God, John, by Divine permission Lord Bishop of London, and Official Principal of the Consistorial and Episcopal Court of London, lawfully constituted, your surrogate, or some other competent judge in this behalf, the proctor of Ann Mills against Mark W——, of the parish of Saint James, Westminster, in the county of Middlesex and diocese of London, and against any other person or persons lawfully intervening or appearing before you in judgment for him, by way of complaint, and hereby complaining unto you in this behalf, doth say, allege, and in law articulately propound, as follows, to wit:—

Libel for defamation.

(*e*) The reason of this rule, which applies to no other suit in these courts, whether of a civil or criminal nature, is stated by Lord Stowell as follows:—"In that class of cases founded on reproachful words, and mostly between the lower orders of the people, there is a strong call on the court to make the necessity of personal attendance as short as possible; and therefore a distinction may properly be made in such cases under the discretion of the court." (Hagg. C. R. 1. p. 170, in note .) Another reason may have been a reluctance to entertain these suits at all, and a consequent inclination to dismiss them at an early period of the proceedings, wherever it was just or practicable; and this view is supported by the fact that in a cause of defamation neither party could claim the privilege of suing *in forma pauperis*. Oughton, c. 1, tit. 8, in note (*b*).

First.

That all and every persons or person who utter, publish, assert, or report, or shall have uttered, published, asserted, or reported any reproachful, scandalous, or defamatory words, to the reproach, hurt, or diminution of the good name, fame, and reputation of any other person, contrary to good manners and the bond of Christian charity, are and ought to be monished, constrained, and compelled, to the reclaiming and retracting of such reproachful, scandalous, and defamatory words, and to the restoring the good name, fame, and reputation of the person thereby injured ; and that for the future they refrain from uttering, publishing, or declaring any such reproachful, scandalous, and defamatory words, and are and ought to be canonically corrected and punished, and this was and is true, public, and notorious, and so much the said Mark W—— doth know, or hath heard, and in his conscience believes, and the party proponent doth allege and propound every thing in this and the subsequent articles of this libel contained, jointly and severally to be true.

Second.

That notwithstanding the premises mentioned and set forth in the next preceding article, the said Mark W——, not having the fear of God before his eyes, did, in the months of June, July, August, September, and October, in the year of our Lord one thousand eight hundred and twelve, all, some, or one of them, in the parish of Gatton, in the county of Surrey, or some other parish or public place in the neighbourhood thereof, or near thereunto, in an angry, reproachful, and invidious manner, several times, or at least once, before sundry credible witnesses, defame the said Ann Mills, widow, who was and is a person of good name, fame, reputation, and character, and charged the said Ann Mills with

having committed the foul crime of adultery, fornication, or incontinency, and speaking to or of, and meaning and intending the said Ann Mills, the party, agent, and complainant in this cause, said, affirmed, and published several times, or at least once, these or the like words, "You, thou, or she are, art, or is a whore," or words to that or the like effect, or of the same import and meaning, with several other defamatory words; and this was and is true, and the party proponent doth allege and propound as before.

That the said Mark W—— hath several times, or at least once, before sundry credible witnesses, since the uttering and speaking the defamatory words, in the next preceding article mentioned, owned and confessed that he spoke the said defamatory words, in the next preceding article set forth; and this was and is true, and the party proponent doth allege and propound as before. Third.

That by reason of speaking the said defamatory words, the good name, fame, and reputation of the said Ann Mills, widow, is very much hurt and injured amongst her relations, friends, acquaintance, and others; and this was and is true, and the party proponent doth allege and propound as before. Fourth.

That the said Mark W—— was and is of the parish of Saint James, Westminster, in the county of Middlesex and diocese of London, and therefore, and by reason of the premises, was and is subject to the jurisdiction of this court; and this was and is true, and the party proponent doth allege and propound as before. Fifth.

That the said Ann Mills, widow, the party proponent in this cause, hath rightly and duly complained of the premises to you, the vicar-general and official prin- Sixth.

cipal aforesaid, and to this court; and this was and is true, and the party proponent doth allege and propound as before.

Seventh.

That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays right and justice to be effectually done and administered to him and his said party in the premises, and that the said Mark W——, for his excess in the premises, may be duly compelled to retract and reclaim the defamatory words aforesaid, and that for the future he refrain from uttering such defamatory words as aforesaid, and that he be condemned in the costs made and to be made in this cause on the part and behalf of the said Ann Mills, and compelled to the due payment thereof, by you and your definitive sentence and final decree to be given and pronounced in this cause, and further to do and decree in the premises what shall be lawful in this behalf, not obliging himself to prove all and singular the premises, or to the burthen of a superfluous proof against which the party proponent protests; and saving to himself all benefit of law, prays that so far as he shall prove in the premises, so far he and his said party may obtain in this suit, humbly imploring the aid of your office in this behalf.

The libel having been admitted and issue joined negatively, a term probatory is assigned to the promoter's proctor, and his witnesses are then produced and examined.

To entitle a party defamed to relief in the Ecclesiastical Court, the testimony of *two* witnesses, at least,



must be adduced, but it is not necessary that they should both speak to the same fact. It is good proof of defamation, and the demand of the law is satisfied, if there are two witnesses speaking separately to facts of the same species committed at different times (*g*). If the defendant has himself been defamed by the other party, he may reconvent him in the same cause, that is, he may give a libel in the presence of his proctor, though no citation has been first extracted by him against the promoter. If the libel is given before contestation of suit, the proceeding is termed a "*reconventio proprie dicta*;" and if before conclusion, but after an issue has been given, it is then called a "*reconventio improprie dicta*."

And if the defamatory words are mutually proved, a mutual compensation is to be made both as to the punishment and the costs. But, notwithstanding, the judge may, at his discretion, correct both the defamers, by virtue of his mere office (*h*).

Reconvention is, however, now obsolete, and there is consequently no bar or demur to an accusation of slander, but what is provided by the statute before referred to.

Accordingly, it is usual, on the examination of the promoter's witnesses being completed, for publication to pass, and the cause to be concluded.

If the offence charged in the libel is proved, the judge will, (either by a final interlocutory decree, or by a sentence in writing subscribed by his hand,) decree a penance to be performed by the defendant, and will also condemn him in the promoter's costs of suit.

(*g*) Crompton v. Butler, Hagg. C. R. 1, p. 460.

(*h*) Conset's Practice of the Ecclesiastical Courts, part 6, c. 6, s. 7, and his marginal note.

The sentence is in the following terms:—

*Sentence for Defamation.*

Sentence for  
defamation.

In the name of God, amen. We, Stephen Lushington, Doctor of Laws, Vicar-General of the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, and Official Principal of the Consistorial and Episcopal Court of London, lawfully constituted, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed, the merits and circumstances of a certain cause of defamation or slander, which is controverted and remains undetermined before us in judgment, between C. D., of the parish of                    in the county of                   , and diocese of London, aforesaid, widow, the party, agent, and complainant, on the one part, and A. B., of the same parish, in the county and diocese aforesaid, the party accused and complained of on the other part; and the parties aforesaid having lawfully appeared before us in judgment, by their proctors respectively, and the proctor of the said C. D., praying sentence to be given and justice to be done to his party; and the proctor of the said A. B., also praying justice to be done to his party, and having first carefully and diligently searched into and considered the whole proceedings had and done before us in this cause; and having observed all and singular the matters and things that by law, in this behalf, ought to be observed, we have thought fit, and do thus think fit to proceed to the giving our definitive sentence or final decree in this cause, in manner and form following, to

wit:—for as much as by the acts enacted, deduced, alleged, exhibited, propounded, proved, and confessed, in this cause, we have found, and it doth evidently appear unto us, that the proctor for the said C. D. hath fully and sufficiently founded and proved his intention deduced in a certain libel and other pleadings and exhibits, given in, exhibited, and admitted on her behalf, and now remaining in the registry of this court, (which libel, other pleadings, and exhibits we take and will have taken as if here read and inserted,) for us to pronounce as hereinafter is pronounced; and that nothing, at least effectual, hath on the part of the said A. B., been excepted, deduced, exhibited, propounded, proved, or confessed in this cause, which may or ought in anywise to defeat, prejudice, or weaken the intention of the said C. D. Therefore, we, Stephen Lushington, Doctor of Laws, the judge aforesaid, having first called upon the name of Christ, and having God alone before our eyes, and having heard counsel thereupon, do pronounce, decree, and declare, that the said A. B. did, in the year, months, and place in the said libel mentioned, or some or one of them, contrary to good manners and the bond of Christian charity, publicly and maliciously say, publish, and report several scandalous, reproachful, and defamatory words, in the said the libel mentioned, tending to the infamy, hurt, and diminution of the estate, good name, fame, and reputation of the said C. D., wherefore we do pronounce, decree, and declare, that the said A. B., ought to be duly and canonically corrected and punished, according to the law in that behalf provided, for this so great excess and temerity in the premises, and to be forced and compelled to reclaim and retract such defamatory words, and to the

restitution of the good name, fame, and reputation of the said C.D., and to cease and desist from such defamatory words for the future; and we do also pronounce, decree, and declare the said A.B. to be enjoined and compelled to perform a salutary and suitable penance according to his demerit, for his excess aforesaid; and we do also pronounce, decree, and declare, that the said A.B. be condemned in lawful costs and we do condemn him accordingly.

When the judge makes the decree, or signs the sentence condemnatory of the party cited, he enjoins the latter to certify his having performed the penance enjoined upon him by a convenient time.

The decree is carried into effect by the party in the following manner. The proctor extracts or obtains from the registry, a schedule containing the order of the penance in question, which must be performed in exact accordance with its directions.

This schedule is as follows:—

### *Schedule of Penance.*

Schedule of  
penance.

The order of Penance, as enjoined by the Worshipful Stephen Lushington, Doctor of Laws, Vicar-General, and Official Principal of the diocese of London, to be performed, by Benjamin Hall, of the parish of Saint George in the East, in the county of Middlesex and diocese of London, in the vestry of the said parish.

That the said Benjamin Hall shall, on Sunday, the 17th day of July, 1831, immediately after Divine service and sermon are ended in the forenoon, come

into the vestry-room in the presence of the minister and churchwardens of the said parish, and likewise in the presence of Mary Ann King (wife of Nathaniel King,) of the same parish, and five or six of her friends, if they be there, otherwise in their absence, and shall with an audible voice confess and say as follows:—

Whereas I, Benjamin Hall, have uttered and spoken certain scandalous and opprobrious words of and against Mary Ann King, wife of Nathaniel King, in the parish of Saint George in the East, in the county of Middlesex, and diocese of London, to the great offence of Almighty God, the scandal of the Christian religion, and the injury and reproach of my neighbour's credit and reputation by calling her a whore; I therefore before God and you humbly confess and acknowledge such my offence, am heartily sorry for the same, and do ask her forgiveness, and promise hereafter never to offend her in like manner, God assisting me.

The said Benjamin Hall, shall duly certify his due performance, under the hand of the minister, of the said parish, (who shall dictate to him this confession,) and shall return this schedule into the registry of the Consistory Court of London, on or before the day of 1831.

(Signed) JOHN SHEPHARD,  
Deputy Registrar.

On the court-day assigned for certifying the performance of the penance, the schedule is returned into court, with a certificate, as follows, viz.—

*Certificate.*

Certificate of  
the perform-  
ance of the  
penance.

This schedule of penance was duly performed in the vestry-room of the parish of Saint George in the East, in the county of Middlesex, and diocese of London, by the within-named Benjamin Hall, on Sunday, the 17th of July, 1831.

(Signed) R. FANNINGTON, Minister.

G. W. SCHUDDER, Churchwarden.

BENJAMIN HALL.

This having been done, the party is dismissed.

The court will, however, use its discretion, in remitting the penance, on sufficient cause being shewn, such as the delicate health of the defendant, but it is not competent to the court to depart from the usual form of proceeding unless under special circumstances (*g*).

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## PERTURBATION OF SEAT.

THE seating of parishioners, though vested by the general law in the churchwardens of every parish, is liable to be controlled by the revising authority of the ordinary, to whom also recourse must be had whenever

(*g*) Curt. R. vol. 1, p. 37, than a public recantation of the  
Chick v. Ramsdale. It is now offence of which the party has  
held that this part of the sentence been guilty. Ibid.  
is not intended as anything more

the right of possession of a pew forms the subject of a dispute between parishioners who assert an equal title thereto (*h*).

The use of all the pews of a parish church belongs to the parishioners.

They are to be seated therein, in the first instance, by the churchwardens, but the power of the latter is, however, subject to the control of the ordinary who is to see that the churchwardens exercise their authority discreetly, for the proper accommodation of the parishioners at large. No contested question regarding title or the right of possession can be decided by the church officers, who are so far incompetent, but it must be by them referred to the cognisance of the ecclesiastical consistory to which they may happen to belong.

If therefore a person having a possessory title to a church seat, or a faculty from the ordinary granting or confirming possession, is disturbed therein by the unauthorized intrusion of any individual, and desires relief from the law, he has his choice of two proceedings, viz.—either against the churchwardens or the perturbator, and his intention will be to obtain from the former a protection to his quiet enjoyment of the pew in suit, or to compel the latter to prove a preferable title or cease for the future his illegal intrusion.

There is also another cause varying slightly in the form of proceeding, but of the same general nature. It has been observed before, that as all the pews in a church are the common property of the parish, and are to be applied for the use of the parishioners in com-

(*h*) *Walter against Gunner and Drury*, Hagg. C. R. 1, p. 317. *peigne*, Phill. R. 3, p. 16,. *Fuller v. Lane*, Add. R. 2. p. 425, *Hawkins and Coleman v. Com-&c. &c.*

mon, the latter are entitled to be provided with such accommodation, orderly and in accordance with their station in society, unless the church is already completely occupied, or there exists any other equally stringent reason to prevent it. When, therefore, no such excuse can be given, but the parishioner is still unable to obtain a sitting, or at least one that he considers proper for himself and family, at the hands of the churchwardens, he has a right to invoke the protecting power of the ordinary, in order to compel them to make him a fit and convenient appropriation.

The following forms will illustrate the citation :—

### *Citation.*

Citation for  
perturbation  
of seat.

George Henry, by Divine permission, &c., greeting :

We do, by these presents, &c. cite or cause to be cited, John Murley and Robert Nelson, churchwardens of the parish and parish church of Merriott, in the county of Somerset, and our diocese and jurisdiction, to appear before us, &c. to answer to John Webber, nurseryman, a parishioner and inhabitant of the said parish of Merriott, and shew good and sufficient cause (concludent in law) why he, the said John Webber, should not be restored to the occupancy and enjoyment, by himself and family, of a certain pew (i), in the parish church of Merriott aforesaid, duly allotted to him many years since, as suited to his station or condition and family, by the churchwardens for the time being of the said parish, and which pew, in virtue of

(i) The situation of the pew identity; e. g. "situate in the  
may be described, so as to fix its aisle, and numbered ."



such allotment, he the said John Webber, with his family, was in undisturbed possession of, and occupied and enjoyed, from the time of such allotment, until unduly dispossessed thereof in the year 1836 (*k*), at the promotion of the said John Webber, &c., &c.

### *Citation.*

Spencer Madan, &c. cite, or cause to be cited, John Marshall, Grocer, and Robert Page, Taylor, Churchwardens of the parish and parish church of All Saints, in the town of Northampton, in the county and archdeaconry of Northampton, and diocese of Peterborough, to appear, &c. to shew cause why they have not seated, or caused to be seated, one Henry Becke, of the parish of All Saints aforesaid, in the town of Northampton aforesaid, in a suitable and convenient seat or pew within the said parish church of All Saints, of which they, the said John Marshall and Robert Page, are now the churchwardens, according to his situation and condition in life, he the said Henry Becke being an attorney-at-law and a solicitor in Her Majesty's Courts at Westminster, and a principal inhabitant and parishioner of the aforesaid parish of All Saints, in the town of Northampton, for the space of one year and upwards last past, and he the said Henry Becke having duly applied to them, the said John Marshall and Robert Page, to be-so seated, and which they have

Citation for  
the same.

(*k*) In case the objection has been taken to the occupancy of a pew by the promoter, on account of a decrease in the number of his family, these words may be added, "and is a pew no more than adequate to the due accommodation of the said John Webber and his family during Divine service."

neglected and refused to do, at the instance and promotion of him the said Henry Becke, &c.

The steps before described having been taken, and a libel prayed, the proctor for the promoter, if not ready with it, will be assigned to bring it in on the following court-day.

The libel is drawn in the following form, viz.:—

### *Libel.*

Libel for perturbation of seat against the intruder.  
First.

In the name of God, &c.

That, in or about the month of March, in the year of our Lord 1817, the said Samuel Turner became possessed of a capital leasehold house and premises, situate within the said parish of Sunbury, and went to live and reside therein, and hath ever since occupied the said house and premises, and been a parishioner and inhabitant of the said parish ; and this, &c.

Second.

That, soon after the said Samuel Turner so became a parishioner and inhabitant of the said parish of Sunbury, as mentioned and set forth in the next preceding article of this libel, he and his family were, with the consent of the churchwardens of the said parish for the time being, placed and seated in a pew situate in the south aisle of the parish church of Sunbury aforesaid, (being the pew in question in this cause,) and from that time he, the said Samuel Turner, and his family have constantly and uniformly used and occupied the same, and regularly sat therein, during the time of their attendance on Divine service in the said church, and they so continued in the peaceable and undisturbed possession and enjoyment of the said pew, from the

time they were so placed therein, until they were molested and disturbed therein by the said R. H. Giraud, as is hereinafter particularly mentioned and set forth; and &c.

That on a Sunday happening in the beginning of the month of September, 1820, and prior to Sunday the 17th day of that month, the said R. H. Giraud went to the said parish church of Sunbury, and, without any lawful authority for so doing, intruded himself and his family into the said pew in question in this cause, and sat in and occupied the same during the time of Divine service in the forenoon of that day; and this, &c. Third.

That on Sunday, the said 17th day of September, in the said year 1820, the said R. H. Giraud again went to the said parish church of Sunbury, and again, without any lawful authority, intruded himself and his family into the aforesaid pew in question in this cause; that on the said Samuel Turner also going to the said church for the purpose of hearing Divine service, and repairing to his aforesaid pew, he found the same occupied by the said R. H. Giraud and his family, who had so intruded themselves therein; that the said Samuel Turner requested the said R. H. Giraud and his family to quit the said pew, but he refused so to do, and contended that he had a right to use and occupy the same; and he, the said R. H. Giraud, and his family have ever since continued to intrude themselves into the said pew, and to use and occupy the same, and have thereby prevented the said Samuel Turner from using and occupying the said pew; and this, &c. Fourth.

That of and concerning the premises, &c. Fifth.

That the said R. H. Giraud, &c. Sixth.

Seventh.

That all and singular, &c. and that the said R. H. Giraud may be monished that for the future he refrain from intruding himself into the pew in question in this cause, and from disturbing or molesting the said Samuel Turner or his family in the quiet and peaceable possession of the said pew ; &c. &c.

### *Libel.*

Libel for the same against the churchwardens, one of them being the intruder.

First.

In the name of God, &c.

That ever since the year , the said John Webber hath possessed a capital house and premises and freehold estate, consisting of acres, or thereabouts, respectively situate within the said parish of Merriott, and hath resided in and occupied the said house, premises, and estate, and been a parishioner and inhabitant of the said parish ; and this was, &c.

Second.

That in or about the month of , in the year 1831, the said parish church of Merriott having then recently undergone considerable repairs, an appropriation of the pews and sittings therein was, under the sanction of the vestry of the said parish first duly had and obtained, made to and amongst the parishioners and inhabitants of the said parish, under the direction and by the authority of A. B. and the said John Webber, the churchwardens for the time being of the said parish. That accordingly, at such time, a certain pew, situated in , being the pew in question in this cause, was duly assigned and appropriated to the use of the said John Webber and his family as parishioners and inhabitants of the said parish ; and from such time he, the said

John Webber, and his family, usually to the number of six persons, constantly used and occupied the said pew and sat therein during the time of their attendance at Divine service in the said church, and he and they so continued in the peaceable and undisturbed possession and enjoyment of the said pew until they were unduly and illegally dispossessed thereof, in the manner and at the period hereinafter pleaded and set forth. That the said pew was, in the year , partially altered, whereby and otherwise an additional pew was obtained, but that the said pew so altered was not increased in point of accommodation, and the same continued, as it had before been, a fit and proper pew for the said John Webber, in respect of his property within the said parish, and the number of his family; and this, &c.

That from and after the time when the said John Webber and his family were placed in the said pew, as in the next preceding article is pleaded, and during their occupation thereof, he, the said John Webber, in pursuance of or according to a certain resolution of a vestry meeting, duly held in and for the said parish, to the effect that the parishioners of the said parish occupying pews or sittings in the said church should pay a certain sum annually, for the purpose of raising a sufficient sum to pay and liquidate certain expenses which had been incurred in effecting repairs to the said church, paid towards the same the annual sum of forty shillings, and he, the said John Webber, hath been and still is ready and willing to continue such payments, and hath many times declared to the said John Murley and Robert Norton his readiness so to do, and tendered or offered to pay, the said sum for the purposes or in pursuance of the resolution aforesaid, if allowed to continue in or have the peaceable occupation of the said pew; and this, &c. Third.

Fourth.

That at or about Easter, in the year 1836, the said John Murley and Robert Norton, as churchwardens of the said parish, publicly announced their intention to let the said pew, in the occupation, as aforesaid, of the said John Webber, at an annual rent to the best bidder for the same; and accordingly they, or one of them, put up, or caused to be put up, the said pew to public auction; whereupon the said Robert Norton, on his own behalf, bid for the said pew, and having been declared the highest bidder for the same, the occupancy of the said pew was adjudged to him, the said Robert Norton, on his paying annually the sum of two pounds five shillings as rent for the same; and they, the said John Murley and Robert Norton, did thereupon oust and dispossess the said John Webber and his family from the said pew, and that they have not, in lieu thereof, seated him, the said John Webber, and his family, fitly and properly; and this, &c.

Fifth.

That ever since the occasion mentioned and set forth in the next preceding article of this libel, the said Robert Norton hath unduly and illegally intruded himself and his family into and occupied the said pew, at and during the time of the celebration of Divine service in the parish church of Merriott, and hath thereby prevented, and still continues to prevent, the said John Webber and his family from using and occupying the same. And the party proponent doth expressly allege and propound that the said John Webber hath repeatedly applied to and requested him, the said Robert Norton and the said John Murley, to restore him, the said John Webber, to the occupancy and enjoyment of the said pew, but that they have constantly refused or declined so to do; and, &c.

Sixth.

That of and concerning the premises, &c.

That the said John Murley and Robert Norton are now the churchwardens for the time being of the parish of Merriott aforesaid, and therefore, and by reason of the premises, and of the appearance by them given to the citation issued against them in this cause, are subject to the jurisdiction of this court ; and this, &c. Seventh.

That all and singular the premises, &c. And that the said John Murley and Robert Norton may be monished to restore the said John Webber to the occupancy and enjoyment of the pew in question in this cause by himself and his family ; and that the said Robert Norton may be monished that for the future he refrain from intruding himself or his family into the said pew, and from disturbing or molesting the said John Webber and his family in the possession of the same ; and that the said John Murley and Robert Norton may be condemned in the costs of suit made, &c. Eighth.

The libel having been admitted to proof, an issue is required from the defendant. If given in the negative, the personal answers of the latter are taken, and there is henceforth no discrepancy between the practice observed in this and the suit for defamation.

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### SUBTRACTION OF CHURCH RATE.

On the refusal of a parishioner to pay a rate for the repairs and necessary expenses of a church or chapel, legally made by the parishioners and inhabitants of the parish or chapelry assembled in vestry, the church-

wardens may proceed against the recusant, to recover his proportion of the assessment, in a cause of subtraction of church-rate.

These questions are obviously of ecclesiastical cognisance, but under the 53d Geo. III. c. 127, a limitation has been placed upon the latter. By the seventh section of that act, it is provided that if any person rated to a church or chapel-rate (the validity of which has not been questioned in any ecclesiastical court,) refuses payment of it, any justice of the county, &c., on complaint of the churchwardens, may convene such person before two or more justices, who may examine, on oath, into the merits of the complaint, and order payment of any sum so due, not exceeding £10 besides costs ; but if the validity of the rate, or the liability of the person from whom it is demanded be disputed, and the party disputing it give notice thereof to the justices, their jurisdiction ceases and that of the ecclesiastical courts attaches.

The church-rate must be required for the reparation of the fabric and ornaments of the church and the necessary expenses of Divine service, in which are included the expense of consecration (*l*).

The law requires that all the property shall be rated : houses and lands, and property of that description (*m*) are *prima facie* liable to church-rate, and the rate to be paid by the occupiers in the parish should be made according to the value of their several occupations.

The presumption is in favour of a church-rate, and the burthen of disproving its legality lies upon the impugnant.

(*l*) Warner v. Gater, 2 Curt. p. 315.

(*m*) Chesterton and Hutchins v. Farlar, 1 Curt. p. 364.



The various defects which vitiate a church-rate may be thus enumerated: inequality in the assessment (*n*), or the omission of parishioners in it (*o*); the illegality of the mode in which the vestry has been constituted, the manner of voting thereat, &c.; the fact of the rate being retrospective; the inclusion in it of objects foreign to its nature, such as the salary of an incumbent, &c. (*p*); the non-liability of the person rated, &c.

The practice in this kind of suits is the same as in those which have immediately preceded.

I will give forms of the citation and libel:—

### *Citation.*

Charles James, by Divine permission Bishop of London, to all singular clerks and literate persons, whomsoever and wheresoever in and throughout our whole diocese of London, greeting:

Citation for subtraction of church-rate.

We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, Frederick Shore Nodin, a parishioner and inhabitant of the parish of Saint Olave, Hart Street, in the city of London and our diocese aforesaid, to appear personally or by his proctor, duly constituted, before the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or

(*n*) *Lee and Parker v. Chalcraft*, 3 Phill. p. 639.

(*o*) *Miller v. Bloomfield*, Deleg. 2 Add. p. 33. But a slight inequality or an unimportant omission will not be held fatal.

(*p*) *Tann and Clithero v. Owen*, June 6, 1834. Cons. of London, decision of Dr. Lushington.

some other competent judge in this behalf, in the Common Hall of Doctors Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after he shall have been served with this citation, if it be a general session, by-day, or additional court-day of our said court, otherwise on the general session by-day, or additional court-day of our said court then next ensuing, at the hour of the sitting of the court, and there to abide, if occasion require, during its continuance, then and there to answer to John Dixon and John Hatchett, the churchwardens of the said parish, in a certain cause of subtraction of church-rate, and further to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said John Dixon and John Hatchett, and what you shall do, or cause to be done, in the premises, you shall duly certify our vicar-general and official principal aforesaid, or some other competent judge in this behalf, together with these presents. Dated at London, &c.

### *Libel.*

Libel for  
subtraction  
of church-  
rate.  
First.

In the name of God, amen, &c.

That on or about the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and thirty-three, the churchwardens and parishioners, (rate-payers,) of the parish of Saint Mary Abbotts, Kensington aforesaid, met in the vestry-room of the said parish, pursuant to due and legal notice given in that behalf on the Sunday then next preceding, and being so met, then and there duly made a rate or assessment of fourpence

in the pound on all properties in the said parish, or rateable, or on all the inhabitants of the said parish, and others so rateable, in respect to such properties, for and towards the repairing, cleansing, preserving, supporting, and amending the parish church of the said parish, and for defraying and indemnifying the churchwardens of the said parish, of and in respect to all incidental costs and expenses which they might be put to touching or concerning their said office of churchwardens for the year, from Lady-day in the year of our Lord one thousand eight hundred and thirty-three, to Lady-day in the year of our Lord one thousand eight hundred and thirty-four. That the said rate was afterwards duly confirmed, and that, in compliance therewith and in conformity thereto, by far the greater part of the inhabitants and others, rate-payers of the said parish, have paid and satisfied the respective sums of money to or at which they were rated or assessed in and by the said rate; and this, &c.

That prior to, and at the time of the making of the rate in the next preceding article pleaded, the said William Farlar, party in this cause, did, as he now does, hold, occupy, possess, or enjoy a messuage, tenement, or dwelling-house and premises, of the annual value of fifty-five pounds, situate at No. 41, Brompton Square, in the said parish of Saint Mary Abbots, Kensington, for and in respect of which he was rightly and equally rated and assessed, in the rate aforesaid, at the sum of eighteen shillings and fourpence; and that he did also, at the time aforesaid, hold, occupy, and enjoy other rateable premises within the said parish, which are described in the said rate at the sum of two shillings and eightpence; and this, &c. Second.

Third.

That in part supply of proof of the premises in the next preceding articles pleaded, the party proponent craves leave to refer to the original book, wherein the inhabitants and others occupying premises in the parish of Saint Mary Abbots, Kensington, aforesaid, were rated and assessed pursuant to the resolution of the said vestry as before pleaded, to be brought into the registry of this court (if necessary), and referred to at the hearing of this cause; and also doth exhibit, hereto annex, and pray to be here read and inserted and taken as part and parcel hereof, a paper writing marked No. 1, and doth allege and propound the same to be and contain a true and faithful copy of the assessment or charge made upon the said William Farlar, in respect of the house and stable occupied by him as aforesaid, as pleaded in the next preceding article and appearing in the said book. That the said paper writing hath been faithfully extracted from the said original book, and hath been carefully collated with the same, and found to agree therewith; that all and singular the contents of the said book and paper writing were and are true; that all things were so had and done as therein contained; and that William Farlar therein mentioned, and William Farlar, party in this cause, were and are the same persons, and not divers; and this, &c.

Fourth.

That the said William Farlar hath been several times requested and desired to pay, or cause to be paid, the said sum of eighteen shillings and fourpence, and two shillings and eightpence, so rated and assessed upon him, as aforesaid, but hath refused, and still doth refuse, to pay the same; and this, &c.

Fifth.

That the said William Farlar was and is of the parish of Saint Mary Abbots, Kensington, in the county of

Middlesex, and diocese of London, and therefore and by reason of the premises was and is subject to the jurisdiction of this court; and this, &c.

That the said Charles Chesterton and Samuel Hutchins, the parties in this cause, were duly sworn and admitted into the office of churchwarden of the said parish of Saint Mary Abbots, Kensington, aforesaid, for the year of our Lord one thousand eight hundred and thirty-three; have since continued to be, and now are, the Churchwardens of the said parish; and that the said sums of eighteen shillings and fourpence, and two shillings and eightpence, are now due from the said William Farlar, and payable to them, the said churchwardens; and this, &c. Sixth.

That of and concerning the premises it hath been and is, on the part and behalf of the said Charles Chesterton and Samuel Hutchins, the Churchwardens aforesaid, rightly and duly complained to you, the Vicar-General and Official Principal aforesaid, and to this court; and this, &c. Seventh.

That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays right and justice may be effectually done and administered to the said Charles Chesterton and Samuel Hutchins, in the premises, and that the said William Farlar may be adjudged to pay the said sums of eighteen shillings and fourpence, and two shillings and eightpence, so assessed upon him as aforesaid, and condemned in costs, and compelled to the due payment of the same by you and your definitive sentence, or final Eighth.

interlocutory decree to be given in that behalf; and this, &c.

Additional  
article.

That the said Charles Chesterton and Samuel Hutchins, the Churchwardens aforesaid, by virtue of their said office, caused the said William Farlar (and other defaulters) to be summoned on the twenty-third of May, one thousand eight hundred and thirty-five, before two of His Majesty's Justices of the Peace for the county of Middlesex, for the Brompton district, in the said parish of Saint Mary Abbots, Kensington aforesaid, to shew cause why he refused to pay the said sums of eighteen shillings and fourpence, and two shillings and eightpence, so assessed upon him as aforesaid; that the said William Farlar accordingly attended such summons, but refused to pay, distinctly on the ground of his objecting to the legality of the said assessment, in consequence whereof the said magistrates declined to proceed for the recovery of the said rate or assessment.

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#### SUITS TO RECOVER PENALTY FOR NON-RESIDENCE, UNDER 1 & 2 VICT. C. 106.

UNDER the 1 and 2 Vict. c. 106, (entitled "An Act to abridge the holding of Benefices in Plurality and to make better Provision for the Residence of the Clergy,") and by the 32nd and 114th sections of that act, a person, duly authorized by the bishop of

the diocese, by writing, under his hand and seal, is empowered to sue for and recover, in the court of such bishop, certain proportions of the annual value of the benefice of any spiritual person who shall, without such license or exemption as is allowed in the same act, absent himself from his benefice or house of residence for certain periods specified therein (q).

The proceedings under this statute are conducted according to the general ecclesiastical practice, and may be illustrated by the following forms.

The authority, under the hand and seal of the bishop, appointing the promoter of the suit, is as follows :—

*Bishop's Authority to the Promoter.*

Whereas the Reverend John Bluck, Clerk, Rector of the parish and parish church of Walsoken, in the county of Norfolk and diocese of Norwich, has, without any such license or exemption as is allowed for that purpose in an Act of Parliament, passed in the session of Parliament held in the first and second years of the reign of Her present Majesty, entitled “An Act to abridge the holding of Benefices in Plurality, and to make better Provisions for the Residence of the Clergy,” and without having been resident at some other benefice of which he was possessed, absented himself from his benefice of Walsoken aforesaid, for a period exceeding the space of three months, and not exceeding six months, of and in the year ending the thirty-first day of December, one thousand eight hun-

Bishop's  
authority to  
the pro-  
moter.

(q) Bluck v. Rackham, Arches, Easter Term, 1845.

dred and forty-two, and by reason thereof, under the provisions of the said act, has forfeited one-third part of the annual value of the said benefice.

And whereas it is provided by the said act that all penalties and forfeitures incurred under the same by any spiritual person holding a benefice shall be sued for and recovered in the court of the bishop of the diocese in which such benefice is situate, and by some person duly authorized for that purpose by such bishop, by writing under his hand and seal. Now know all men by these presents that we Edward, by Divine permission, Lord Bishop of Norwich, in pursuance of the provisions of the said Act of Parliament, have authorized, and by these presents under our hand and seal do authorize, Matthew Rackham, of the hamlet of Thorpe, in the county of the city of Norwich, Gentleman, to sue for and recover in our Episcopal Consistorial Court of Norwich, as well the said penalty or forfeiture as all or any other penalties or forfeitures incurred under the aforesaid act by the said Reverend John Bluck by reason of his absence from his said benefice as aforesaid, and, if necessary, to pray and procure from our said Episcopal Consistorial Court at Norwich a monition and sequestration or monitions and sequestrations to enforce the payment of the said penalties and forfeitures, together with the reasonable expenses incurred in recovering the same; and further to do and expedite whatever else may be requisite and necessary towards the recovery of the said penalties; and whatsoever the said Matthew Rackham shall lawfully do or cause to be done herein we do hereby promise to ratify, allow, and confirm. In witness whereof



we have hereunto set our hand and seal this eleventh day of September, in the year of our Lord one thousand eight hundred and forty-three.

EDW. NORWICH, (L.S.)

Signed, sealed, and delivered in the presence of us,

W. N. H. TURNER.

ROBERT GALE.

The decree against the clerk is as follows :—

*Decree.*

Edward, by Divine permission, Lord Bishop of Nor- Decree.  
wich, to all and singular clerks and literate persons,  
whomsoever and wheresoever, in and throughout  
our whole diocese of Norwich, greeting :

Whereas the Worshipful Charles Evans, Esquire,  
Master of Arts, Surrogate, duly appointed of the Wor-  
shipful William Yonge, Clerk, Master of Arts, our  
Vicar-General in Spirituals, and Official Principal of  
our Episcopal Consistorial Court of Norwich, lawfully  
constituted, rightly and duly proceeding, hath, at the  
petition of the proctor of Matthew Rackham, of the  
hamlet of Thorpe, in the county of the city of Norwich,  
Gentleman, decreed the Reverend John Bluck, of Wal-  
soken, in the county of Norfolk, Clerk, Rector of the  
parish and parish church of Walsoken aforesaid, within  
our diocese of Norwich, to be cited and called to appear  
in judgment on the day, and at the time and place, and  
to the effect hereinafter mentioned, (justice so requir-  
ing ;) we do therefore hereby authorize and empower,  
and strictly enjoin and command you, jointly and seve-  
rally, peremptorily to cite or cause to be cited the said

Reverend John Bluck to appear personally or by his proctor, duly authorized, before our said Vicar-General in Spirituals, and Official Principal of our Episcopal Consistorial Court of Norwich, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Cathedral Church of the Holy and Undivided Trinity, of Norwich, at the place of judicature there, on Monday, the eighteenth day of September instant, at the usual hours for hearing causes there, then and there to shew cause (if he has or knows any) why he the said Reverend John Bluck should not be pronounced to have forfeited one-third of the annual value of his benefice of Walsoken aforesaid, by reason of his having been absent therefrom for a period exceeding the space of three months, and not exceeding the space of six months, of and in the year ending the thirty-first day of December, one thousand eight hundred and forty-two, without any such license or exemption as is allowed for that purpose in an Act of Parliament passed in the session of Parliament held in the first and second years of the reign of Her present Majesty, entitled "An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy," and without having been resident at some other benefice of which he was possessed ; and why the payment of such forfeiture, together with the reasonable expense incurred in recovering the same, should not be enforced by monition and sequestration, under and pursuant to the provisions of the said statute passed in the session of Parliament held in the first and second years of the reign of Her present Majesty as aforesaid ; and further to do and receive as unto law and justice shall appertain, under pain of the law and

contempt thereof, at the suit or instance of the said Matthew Rackham, duly authorized for that purpose by us in writing under our hand and seal; and what you shall do or cause to be done in the premises you shall duly certify our said vicar-general in spirituals and official principal, his surrogate, or some other competent judge in this behalf, together with these presents.

Given under the seal of our said vicar-general and official principal, which in this behalf we use, this twelfth day of September, in the year of our Lord one thousand eight hundred and forty-three, and of our consecration the seventh.

The libel is as follows:—

### *Libel.*

In the name of God, amen, &c.

That in and by a certain Act of Parliament made and passed in a session of Parliament held in the first and second years of the reign of Her present Majesty, entituled “An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy,” it is amongst other things enacted in words, or to the effect, “that every spiritual person holding any benefice shall keep residence on his benefice, and in the house of residence (if any) belonging thereto; and that if any such person shall without any such license or exemption as is in the said act allowed for that purpose, or unless he shall be resident at some other benefice of which he may be possessed, absent himself from such benefice or from such house of residence (if any) for any period exceeding the space

Libel for  
penalty on  
non-resi-  
dence.

First.

32nd Sec.  
tion.

114th Section.

of three months together, or to be accounted at several times in any one year, he shall, when such absence shall exceed three months and not exceed six months, forfeit one-third part of the annual value of the benefice from which he shall so absent himself;" and that it is in and by the said act further provided in words or to the effect, "that all penalties and forfeitures which shall be incurred under the same by any spiritual person holding a benefice shall and may be sued for and recovered in the court of the bishop of the diocese in which such benefice is situate, and by some person duly authorized for that purpose by such bishop by writing under his hand and seal, and in no other court and by or at the instance of no other person whatsoever; and that the payment of every such penalty or forfeiture, together with the reasonable expense incurred in recovering the same, shall and may be enforced by monition and sequestration; and that the said Act of Parliament is a public Act, and that the same is and ought to be known and taken notice of by all judges and courts of judicature. And this was and is true, and the party proponent alleges and propounds of everything in this and the subsequent articles of this allegation contained jointly and severally.

Second.

That the said Reverend John Bluck, Clerk, (the party against whom this cause is promoted,) is a priest or minister in holy orders of the Church of England, and for two years and upwards last past hath been and now is rector of the rectory and parish church of Walsoken, in the county of Norfolk and diocese of Norwich, whereto he hath been rightly and lawfully instituted and inducted; and that for and as the lawful rector of the said rectory and parish church of Wal-

soken the said Reverend John Bluck hath been for two years and upwards last past and now is commonly accounted, reputed, and taken. And this was and is true, and so much the said Reverend John Bluck knows or has heard and believes, and in his conscience admits and confesses to be true, and the party proponent alleges and propounds as before.

That the said Reverend John Bluck, being rector of Third. the said rectory and parish church of Walsoken as aforesaid, and neither having any such license or exemption from residence upon his said benefice as is allowed in the Act of Parliament aforesaid, nor resident upon any other benefice whereof he was possessed, absented himself from, and did not keep residence at, his said benefice of Walsoken for a period exceeding three months, and not exceeding six months, of and in the year beginning and ending respectively the first day of January and the thirty-first day of December, one thousand eight hundred and forty-two, to wit, from, on, or about the twenty-ninth day of August to the said thirty-first day of December of the said year; and that he hath thereby, under the provisions of the aforesaid Act of Parliament hereinbefore set forth or mentioned, forfeited one third part of the annual value of his said benefice of Walsoken. And this was and is true, public, and notorious, and the party proponent alleges and propounds as before.

That the net annual value of the said benefice Fourth. of Walsoken, estimated in manner as directed in and by the aforesaid Act of Parliament for all the purposes of the said act, is the sum of one thousand and three hundred pounds, or one thousand and two hundred pounds, or at least one thousand and one hun-

dred pounds; and this was and is true, public, and notorious, and the party proponent alleges and propounds as before.

**Fifth.** That the Right Reverend Father in God, Edward, by Divine permission, Lord Bishop of Norwich, hath, in and by a writing under his hand and seal, duly authorized and empowered the said Matthew Rackham to sue for and recover all penalties and forfeitures incurred by the said Reverend John Bluck, under or in pursuance of the provisions of the Act of Parliament aforesaid; and that the said writing (to which in supply of proof the party proponent prays leave to refer) hath been and now remains duly filed in the registry of this court; and this was and is true, public, and notorious, and the party proponent alleges and propounds as before.

**Sixth.** That of and concerning the premises it hath been and is, on the part and behalf of the said Matthew Rackham, rightly and duly complained to you, the surrogate of the official principal aforesaid; and the party proponent alleges and propounds as before.

**Seventh.** That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays that right and justice may be effectually done and administered to him and his said party in the premises; and that the said Reverend John Bluck may be pronounced to have forfeited one third part of the annual value of his benefice of Walsoken aforesaid, and be condemned in the payment thereof and of the reasonable expense incurred in the recovery of the same in this cause and otherwise, and compelled to the due payment thereof by

your definitive sentence or final decree to be given and made in this behalf; and that the same may be enforced, if need be, by monition and sequestration, the party proponent not obliging himself to prove all and singular the premises or to the burden of a superfluous proof, against which he protests, and prays that so far as he shall prove in the premises, so far he may obtain in his petition, the benefit of the law being always preserved.

The sentence is as follows:—

*Sentence.*

In the name of God, amen. We, Charles Evans, Esquire, Master of Arts, Surrogate, duly appointed, of the Worshipful William Yonge, Clerk, Master of Arts, Vicar-General in Spirituals, of the Right Reverend Father in God, Edward, by Divine permission, Lord Bishop of Norwich, and also Official Principal of the Episcopal Consistorial Court of Norwich lawfully constituted, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed the merits and circumstances of a certain cause or business now depending before us in judgment, promoted and brought by Matthew Rackham, of the Hamlet of Thorpe, in the county of the city of Norwich, Gentleman, against the Reverend John Bluck, Clerk, Rector of the rectory and parish church of Walsoken, in the county of Norfolk, within the diocese of Norwich, of shewing cause, if he has or knows any, why he, the said Reverend John Bluck, should not be pronounced to have forfeited one-third of the annual value of his

*Sentence.*

benefice of Walsoken aforesaid, by reason of his having been absent therefrom for a period exceeding the space of three months and not exceeding six months, of and in the year ending the thirty-first day of December, one thousand eight hundred and forty-two, without any such license or exemption as is allowed for that purpose in an Act of Parliament passed in the session of Parliament held in the first and second years of the reign of Her present Majesty, intituled "An Act to abridge the holding of Benefices in Plurality, and to make better Provision for the Residence of the Clergy," and without having been resident at some other benefice of which he was possessed, and why the payment of such forfeiture, together with the reasonable expense incurred in recovering the same, should not be enforced by monition and sequestration, under and pursuant to the provisions of the said statute, passed in the session of Parliament held in the first and second years of the reign of Her present Majesty as aforesaid, in which cause the said Matthew Rackham and the said Reverend John Bluck having lawfully appeared before us in judgment by their proctors respectively, and the said proctor of the said Matthew Rackham having prayed sentence to be given for and justice to be done to his party, and that the said Reverend John Bluck may be pronounced to have forfeited one-third part of the annual value of his benefice of Walsoken aforesaid, and be condemned in the payment thereof and of the reasonable expense incurred in the recovery of the same in this cause and compelled to the due payment thereof by our definitive sentence or final decree, and that the same may be enforced, if need be, by monition and sequestration. And the



proctor of the said Reverend John Bluck also having prayed sentence to be given for and justice to be done to his party, and we, having observed all and singular the matters and things which by law ought to be observed on this behalf, have thought fit, and do thus think fit, to proceed to the giving our definitive sentence or final decree in this cause in manner following, to wit:—Forasmuch as by the acts enacted, deduced, alleged, exhibited, propounded, proved, and confessed in this cause, we have found and it doth evidently appear to us that the proctor of the said Matthew Rackham hath sufficiently proved his intention, deduced in a certain allegation given in and admitted on his part and behalf in the said cause, and now remaining in the registry of this court (which said allegation we take and will have taken as if here read and inserted) for us to pronounce as hereinafter is pronounced, and that nothing, (at least effectual in law,) hath on the part and behalf of the said Reverend John Bluck been excepted, deduced, alleged, exhibited, propounded, proved, or confessed in this cause which may or ought in any wise to defeat, prejudice, or weaken the intention of the proctor of the said Matthew Rackham.

Wherefore we, the Worshipful Charles Evans, Esquire, Master of Arts, Surrogate duly appointed, of the Worshipful William Yonge, Clerk, Master of Arts, Vicar-General in Spirituals and Official Principal as aforesaid, having heard the proctors of the parties in this behalf, do pronounce, decree, and declare that the said Reverend John Bluck, being a priest or minister in holy orders of the Church of England for two years and upwards last past, hath been and now is rector of the rectory

and parish church of Walsoken aforesaid, and hath been thereto rightly and lawfully instituted and inducted. And we also pronounce, decree, and declare, that according to the lawful proofs made before us in this cause as aforesaid, the said Reverend John Bluck, neither having, as appears, any such license or exemption from residence upon his said benefice as is allowed in the Act of Parliament aforesaid, nor being resident, as appears, upon any other benefice whereof he was possessed, did absent himself from his said benefice of Walsoken for a period exceeding three months and not exceeding six months of and in the year beginning and ending respectively the first day of January and the thirty-first day of December, one thousand eight hundred and forty-two, to wit, from, on, or about the twenty-ninth day of August, to the said thirty-first day of December of the said year.

Wherefore and by reason of the premises we decree and declare that the said Reverend John Bluck ought to be pronounced to have forfeited one-third part of the annual value of his benefice of Walsoken aforesaid, and we do by these presents so pronounce accordingly, and we do by these presents condemn him, the said Reverend John Bluck, in the payment of such third part of the annual value of his benefice of Walsoken aforesaid, together with the reasonable expense incurred by or on behalf of the said Matthew Rackham in the recovery of the same in this cause, the amount of such third part of the annual value of his said benefice of Walsoken and of such reasonable expense to be ascertained in the usual and accustomed manner by the registrar of our said court. And we do compel him, the said Reverend John Bluck, to the due

payment of the said amount so ascertained of such third part and expenses by this our definitive sentence or final decree, which we give and promulge by these presents, this first day of July, in the year of our Lord one thousand eight hundred and forty-four.

CHARLES EVANS, Surrogate.

After the signing of the sentence a reference is decreed to the registrar, to ascertain the amount or value of the proportion of the annual value of the benefice which has been sued for.

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## GRANT OF A FACULTY.

To enable alterations of any importance or magnitude, such as the erection of galleries, pews, an organ, monuments, or tombs, to be effected in a church, application must be made to the ordinary and his permission obtained (*r*). Before granting this permission, which is denominated *a faculty*, the ordinary calls upon all persons having a right or interest, (*i. e.* the incumbent, churchwardens, and parishioners,) to shew cause why it should not be done, and he hears and determines on the force of any objections that may be made against it.

(*r*) *Maidman v. Malpas*, Hagg. C. R. vol. 1, p. 208. *Bardin and Edwards v. Calcott*, *ibid.* pp. 14, 15, *Graves and others v. Rector and parish of Hornsey*, *ibid.* p. 188. *Tattersall v. Knight*, Phill. R. vol. 1, p. 232. *Seager v. Bowle*, Add. R. vol. 1, p. 554. *Churchwardens of Saint John, Margate v. Parishioners, Vicar, and Inhabitants of the same parish*, Hagg. C. R. vol. 1, p. 198.

The same course is pursued to obtain a confirmation of buildings already erected or alterations already made (*s*).

A faculty must also be obtained before a monument can be legally removed (*t*), or a churchyard levelled (*u*).

A faculty if once issued is good even against the ordinary himself (*x*).

The requisite parties are cited by means of a decree with intimation, of which the following forms will afford the necessary precedents.

### *Decree with Intimation.*

Decree with  
intimation to  
lead a faculty.

Charles Richard, by Divine permission, Bishop of Winchester, to all and singular, clerks, and literate persons, whomsoever and wheresoever, in and throughout that part of our diocese of Winchester which is in the parts of Surrey, greeting.

Whereas, it hath been alleged and set forth before the Reverend John Evans, Clerk, Master of Arts, Surrogate of the Worshipful John Sayer Poulter, Bachelor of Laws, our Commissary, in and for parts of Surrey, lawfully constituted on the part and behalf of the Reverend Edward Boulter, Clerk, Rector of the parish and parish church of Hambledon in the county of Surrey, and our diocese aforesaid, that certain repairs are required to the said parish church of Hambledon and that certain alterations are contem-

(*s*) Thomas and Hughes, v. Morris, Add. R. vol. 1, p. 470.

(*t*) Maidman v. Malpas, Hagg. C. R. vol. 1, p. 208. Hutchins and Denziloe v. Loveland, *ibid.* vol. 1, p. 172.

(*u*) Sharpe and Sangster v. Hansard, Hagg. E. R. vol 3, p. 335.

(*x*) Fuller v. Lane, Add. 2, p. 431.

plated therein and that it is the intention of the said Edward Bullock, Clerk, aided by the Right Honourable the Earl of Radnor, the patron of the living, to defray the whole expense of the said repairs and alterations. And whereas, it was further alleged that at a meeting of the parishioners and inhabitants of the said parish, in vestry assembled, on the 10th day of March, in the present year of our Lord 1846, pursuant to public notice previously given according to law, it having been proposed that certain repairs and alterations in the said church should be effected, and a plan and specification, marked No. 1 and No. 2, embracing such objects being then produced, it was unanimously resolved that the same should be adopted, and in verification of what was so alleged, an authentic copy of the aforesaid resolution of the vestry, signed by the Reverend George G. Lamotte, Clerk, the officiating minister of the said parish, marked with the letter A., and a copy of the plan referred to, marked No. 1, were produced and shewn to the said surrogate, and the same were brought into and now remain in the registry of our said court, as on relation being thereunto had will appear. And whereas it was further alleged that it was and is intended and determined, by the adoption of the said plan, and with a view to carry into effect the aforesaid resolution of vestry, to take down and rebuild the south wall of the said church, and build up the north transept wall, and put on a new roof; to put buttresses to the church or chancel, and to make a new porch; to retile the north side of the said church, and repair the chancel; to put in four Bath-stone windows with new glass, and three Bath-stone windows with old glass, to put up two Bath-stone crosses, to take down galleries and erect

two new galleries, one at the west end for the use of adults, and another in the north transept for the use of children; to remove all the present pews and seats, and to put up new seats, those in the nave, transept, and chancel to have oak stall ends and back rails; to alter and refix the pulpit and reading-desk, and to make such other repairs as may be necessary in and about the said church; and whereas it was further alleged that by carrying into effect the said plan, greater and more convenient accommodation will be afforded in the said church, and that the said Edward Bullock, Clerk, is desirous of obtaining our license or faculty for the said repairs and alterations, and for ratifying and confirming the same when completed; and whereas the said surrogate having duly considered the premises, and rightly and duly proceeding therein, did, at the petition of the proctor for the said Edward Bullock, Clerk, decree the churchwardens, parishioners, and inhabitants of the said parish of Hambledon, in special, and all others in general, having or pretending to have any right, title, or interest in the premises, to be cited, intimated, and called to appear in judgment, on the day at the time and place, in manner and form, and to the effect hereinafter mentioned, (justice so requiring,) we do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the churchwardens, parishioners, and inhabitants of the said parish, in special, and all others in general, having or pretending to have any right, title, or interest in the premises, (by affixing for some time these presents on the outer door of the said parish church of Hambledon, in the county of Surrey, and by affixing and leaving

there affixed a true copy hereof on the Sunday morning next and immediately following the receipt hereof,) to appear personally, or by his, her, or their proctors or proctor, duly constituted, before our commissary aforesaid, his surrogate, or some other competent judge, in this behalf, in the parish church of Saint Saviour, Southwark, in the county of Surrey, and place of judicature there, on the sixth day after the service hereof, as aforesaid, if it be a court-day; otherwise on the court-day then next ensuing, at the hour of twelve o'clock in the forenoon of the same day, being the usual hour of hearing causes and doing justice there, then and there to shew good and sufficient cause, if they or any or either of them have or know any, why our license or faculty should not be granted to the said Edward Bullock, Clerk, for the repairs and alterations of the parish church aforesaid hereinbefore particularly mentioned and set forth, and ratifying and confirming the same when completed; and further to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Edward Bullock, Clerk; and, moreover, that you intimate, or cause to be intimated, to the said churchwardens, parishioners, and inhabitants of the said parish in special, and all others in general, having, or pretending to have, any right, title, or interest in the premises, (and to whom we do so intimate by the tenor of these presents,) that if they, or some, or one of them, do or doth not appear on the day, at the time and place, and to the effect aforesaid; or appearing, do or doth not shew good and sufficient cause concludent in law to the contrary, our commissary aforesaid, his surrogate, or some other competent judge in this behalf,

doth intend to proceed and will proceed to decree and grant such our license or faculty to the said Edward Bullock, Clerk, for the purposes, to the effect, and in manner aforesaid, the absence or rather contumacy of the persons so cited, and intimated in any wise notwithstanding; and what you shall do or cause to be done in the premises, you shall duly certify our said commissary, his surrogate, or some other competent judge in this behalf, together with these presents. Given under the seal of our commissary, which we use in this behalf, this 7th day of April, in the year of our Lord 1846, and in the nineteenth year of our translation.

*Decree with Intimation.*

Decree with  
intimation to  
lead faculty.

Charles Richard, by Divine permission Bishop of Winchester, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout that part of the diocese of Winchester which is within the county of Surrey, greeting:

Whereas it hath been alleged and set forth before the Reverend John Evans, Clerk, Master of Arts, Surrogate of the Worshipful John Sayer Poulter, Bachelor of Laws, our commissary in and for the parts of Surrey lawfully constituted, on the part and behalf of John Weaver and John Davis, churchwardens of the parish of Shalford, in the said county of Surrey, and our diocese aforesaid, that the parish church of Shalford aforesaid is in a decayed and dilapidated condition, and the accommodation therein is insufficient for the parishioners and inhabitants thereof; by reason whereof several meetings of the said parishioners and inhabitants, in vestry assembled, have been held, and a com-



mittee appointed to consider the propriety of enlarging the said church, which committee has recommended that the said parish church, instead of being enlarged, should be rebuilt, and at a meeting of the said parishioners and inhabitants, assembled in vestry, held on the 20th day of February, in the present year 1846, pursuant to public notice, first duly given, to take into consideration the expediency of rebuilding the parish church aforesaid, instead of enlarging the same, it was at such vestry (amongst other things) unanimously decided that it should be done, and a plan of such new church was submitted for approval, and such plan was adopted, subject to any trifling alterations which it might be thought expedient to introduce. And whereas it was further alleged that certain plans and specifications have been made, wherein the arrangement of the contemplated new sittings, including the free sittings in the said new church, are laid down, and which plans and specifications have been submitted to and approved of by the Diocesan and Incorporated Church Building Societies, and the seal of the latter has been affixed thereto, and that there is not any faculty-pew in the said old church, (as in and by a copy of the minute of the said vestry meeting, and a certificate or instrument in writing signed by the Reverend H. B. Shortland, Clerk, the officiating minister of the said parish of Shalford, brought into and now remaining in the registry of the court of our said commissary, on relation being thereunto had, will appear.) And whereas it was further alleged that in pulling down the old parish church it will be necessary to take down and remove certain monuments or tablets within the said old church, and also certain tablets and head and foot-stones on the

outside, or without the walls thereof, and that it may be also expedient to remove some coffins deposited in the ground, either within or without the said walls, and it is proposed that so much of the materials of the said old church as can be used in the building of the said new church shall be used for that purpose, and that other of the materials shall be sold and the proceeds arising from such sale be appropriated towards defraying the expenses of building the said new church, and that it is intended forthwith to take down the said old church, and with our consent, and by the assistance of the Diocesan and Incorporated Church Building Societies and otherwise, to build a new parish church on the site of the old parish church; and upon the said new church being built, to affix on the walls thereof the various monuments or tablets now in the said old church and those on the outside thereof, (if any,) and also to replace the head and foot-stones and coffins as near as possible to the site or place they now occupy. And whereas the surrogate aforesaid having duly considered the premises, and rightly and duly proceeding therein, did, at the petition of the said John Weaver and John Davis, decree the vicar, parishioners, and inhabitants of the said parish of Shalford in special, and all others in general, having or pretending to have any right, title, or interest in the premises, to be cited, intimated, and called to appear in judgment on the day, at the time and place, to the effect and in manner and form as hereinafter mentioned, justice so requiring. We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the vicar, parishioners, and inhabitants of the said parish of Shalford in special,

and all others in general, having, or pretending to have, any right, title, or interest in the premises, (by affixing for some time these presents on the outer door of the parish church of Shalford aforesaid, and by affixing and leaving there affixed a true copy thereof on the Sunday morning next and immediately following the receipt hereof,) to appear personally, or by his, her, or their proctor or proctors, duly constituted, if he, she, or they shall think it their interest so to do, before our commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the parish church of Saint Saviour, Southwark, and place of judicature there, on the sixth day after the service hereof, if it be a court-day, otherwise on the court-day then next ensuing, at the hour of twelve o'clock in the forenoon of the same day, being the usual hour of hearing causes and doing justice there, then and there to shew good and sufficient cause, if they, or any, or either of them have or know any, why our license or faculty should not be granted to the said John Weaver and John Davis, for the purpose of pulling down the old parish church of Shalford aforesaid, and for building a new parish church on the site thereof, and for the removal and replacing of various monuments, tablets, head and foot-stones, and coffins, hereinbefore particularly mentioned and set forth, and for ratifying and confirming the said new church, when built, as the parish church of the said parish of Shalford, in lieu of such old parish church ; and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said John Weaver and John Davis ; and moreover that you intimate or cause to be intimated to the vicar, parishio-

ners, and inhabitants of the said parish of Shalford, in special, and all others in general, having or pretending to have any right, title, or interest in the premises, (to whom we also intimate by the tenor of these presents,) that if they, some, or one of them do not appear on the day, at the time and place, and to the effect aforesaid, or, appearing, do not shew good and sufficient cause, concludent in law, to the contrary, our commissary aforesaid, his surrogate, or other competent judge in this behalf, doth intend to proceed and will proceed to decree, commit, and grant such our license or faculty to the said John Weaver and John Davis, for the purposes and to the effect aforesaid, the absence or rather contumacy of the persons so cited and intimated in any wise notwithstanding; and what you shall do or cause to be done in the premises you shall duly certify our said commissary, his surrogate, or other competent judge in this behalf, together with these presents.

Given under the seal of our said commissary, which we use in this behalf, and dated at London, this, &c.

The decree having been served in the manner mentioned therein, is returned into court, and on the following day, if no appearance be given on behalf of any of the parties cited with a view to contest the question, the faculty is granted by the judge or surrogate, and goes under seal, in the tenor contained in the decree.

## MATRIMONIAL CAUSES.

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THE Ecclesiastical Court has jurisdiction in all cases with respect to the marriage of English subjects, wherever celebrated, and it will sometimes examine the question of a foreign marriage in the case of an alien.

Matrimonial suits may be divided into the following classes :—divorce, or separation *a mensâ et thoro* ; jactitation, or false and malicious boasting of marriage ; the restitution of conjugal rights ; and the nullity of the nuptial bond or contract.

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### DIVORCE BY REASON OF ADULTERY.

ON a violation of matrimonial duty, by the commission of adultery, on the part either of the husband or wife, the innocent partner has a claim to the relief which the Ecclesiastical Court affords, in granting a separation from the guilty individual, and thereby totally suspending the relation of husband and wife (a) ; and all persons who stand in that legal relation are entitled to the

(a) D'Aguilar v. D'Aguilar, Hagg. 1, p. 773, Supplement.

same right. Accordingly, notwithstanding the wide difference of the marriage ceremonies under the Christian and Jewish laws, yet, as the liabilities and mutual duties are considered the same (*b*), Jews are equally allowed to sue for a similar protection in the Court Christian. Nor is the privilege confined to persons who, having the full possession of their reason, can apply in their own name and person, but in the case of a lunatic, whose consort has committed an act of adultery, the committee is enabled to institute an action on his behalf, and obtain for him the aid of this court (*c*).

Such a remedy being afforded by the English law, in the above-mentioned cases, I will next consider the principles which direct the court in receiving the evidence necessary to fix upon the offenders the liability of their guilt; and the evidence is unavoidably of a peculiar kind, for direct proof of adultery is not required, as it would render relief almost impracticable (*d*).

Proximate circumstances are sufficient, provided the fact of criminality can be fairly inferred from them as a necessary conclusion. What the circumstances are which lead to such a conclusion cannot be laid down universally, as they may be infinitely diversified by the situation and character of the parties, by the state of general manners, and by many other incidental circumstances, apparently slight and delicate in themselves, but which may have most important bearings in decisions on the particular case.

(*b*) D'Aguilar v. D'Aguilar, Hagg. 1, p. 773, Supplement.      (*d*) Williams v. Williams, Hagg. C. R. 1, p. 299. Lovenden v. Lovenden, Hagg. C. R. 2, pp. 2, 3.  
 (*c*) Parnell v. Parnell, Hagg. C. R. 2, p. 169. Phill. 2, p. 158.

It is not always necessary to prove the fact of adultery (*e*) in time and place, viz., at any particular hour, or in any particular room. General cohabitation will conclude the parties. For it is sufficient if the court can infer the conclusion from other circumstances, between persons living in the same house, though not seen in the same bed, or in any equivocal situation (*f*); but the court must be satisfied that actual adultery has been committed, as it cannot separate on improper conduct which falls short of that.

The first point necessary to be proved in a suit of this kind is the marriage, as without that there necessarily can be no adultery; and the sentence of the court pronounces that there has been a true and lawful marriage, as well as a violation of it (*g*).

The identity of the parties, a point often of great difficulty in these cases, from the clandestine nature of the actions, must be proved not merely by acknowledgment to the officer who serves them with the citation, and by the appearance in the cause, but by extrinsic evidence (*h*).

In regard to the number of witnesses, two are required, but, as in other ecclesiastical causes, those two are not strictly required both to speak to the same fact; for it is held sufficient to found a sentence of divorce if the witnesses depose to two distinct facts (*i*).

(*e*) Lovenden v. Lovenden, Hagg. C. R. 2, p. 345. Burgess v. Burgess, ib. p. 226.

(*f*) Hamerton v. Hamerton, Hagg. 2, p. 14. Rix v. Rix, Hagg. 3, p. 74.

(*g*) Guest v. Shipley, Hagg. C. R. 2, p. 322. Mayhew v. Mayhew, Phill. 2, p. 14.

(*h*) Williams v. Williams, Hagg. C. R. 1, p. 305.

(*i*) Crompton v. Butler, Hagg. C. R. 1, p. 462.

I will now consider in detail the circumstances from which the inferences of criminality may be drawn.

Adultery may be inferred from general conduct alone, provided the circumstances be sufficient to create a *violent suspicion*.

Statements of general loose and unduly familiar conduct will establish a high and undue degree of familiarity between parties *(k)*. Isolated and detached facts may lead to a conclusion of crime, for the proper way to consider this sort of evidence is, not to take them separately, but in conjunction; they mutually interpret each other; their constant repetition gives them a determinate character, and such habits, when continued in public, lead to the inference that the parties would go greater lengths if opportunities of privacy occurred. Such gross, indecorous, and improper familiarities, with opportunities of privacy, advance to the footing of proximate acts; and if the privacy shewn be frequent, the court will infer the commission of the crime.

Where a criminal connexion has been once shewn, its continuance is presumed, if the parties live under the same roof *(l)*.

Proximate facts next require consideration. Those facts are so called from which the legal conclusion of adultery is immediately deducible, and the court, representing the law, draws the inference which the proximate acts unavoidably lead to *(m)*.

*(k)* Burgess v. Burgess, Hagg. C. R. 2, p. 228.

*(l)* Turton v. Turton, Hagg. R. 3, p. 350.

*(m)* Elwes v. Elwes, Hagg. C. R. 1, p. 278.



General cohabitation is enough to found a sentence of divorce (*n*), and excludes the necessity of proof of particular facts; and where the parties live in the same house, though under the bare appearance of separate beds, separation must follow (*o*). If the adultery has continued for many years, attended with pregnancy and birth of a child, during the husband's absence from Great Britain, it is only necessary to prove the birth of the child, identity, and non-access (*p*); but it must be shewn that there was nothing that necessarily affected the innocent party with a knowledge of such circumstances (*q*).

The circumstance of a woman going to a brothel with a man furnishes conclusive proof of adultery, as it would be almost impossible for a woman to go to such a place but for a criminal purpose (*r*). Venereal disease long after marriage is *prima facie* evidence of adultery (*s*). The husband's attempts, when affected with venereal disease, to force his wife to his bed is of a mixed nature, partly cruelty and partly evidence of adultery.

Where letters are produced from the wife to her paramour, the style of which leaves no doubt of gross familiarity and indulgence, and of proposals for future intrigues, they may be admitted as proof of adultery (*t*).

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| ( <i>n</i> ) Lovenden v. Lovenden, Hagg. C. R. 2, p. 4. Ib. p. 5, Cadogan v. Cadogan, in note. | ( <i>r</i> ) Eliot v. Eliot, in Williams v. Williams, Hagg. C. R. 1, p. 302. Ib. Williams v. Williams, p. 303. |
| ( <i>o</i> ) Chambers v. Chambers, Hagg. 1, p. 445.  | ( <i>s</i> ) Durant v. Durant, Hagg. R. 1, p. 767, Supplement.   |
| ( <i>p</i> ) Richardson v. Richardson, Hagg. R. 1, p. 6.                                       | ( <i>t</i> ) Lovenden v. Lovenden, Hagg. C. R. 2, pp. 21, 22, 23.  |
| ( <i>q</i> ) D'Aguilar v. D'Aguilar, ib. p. 777. Supplement.                                   |  |

But where no indecent familiarities (*x*) or proximate acts were proved, but letters only from the alleged paramour, which had been found in the wife's possession, were produced, but did not necessarily imply the commission of adultery, the circumstances were not held sufficient to support a sentence of divorce by reason of adultery.

The confession of the adulterer or adulteress (*y*), when free from all taint of collusion, and confirmed by circumstances and conduct, ranks among the highest species of evidence. But it must at the same time (*z*), and especially in consequence of the directions of the 105th canon (*nec partium confessioni fides habeatur*) on all occasions be most accurately weighed. The following principles have been laid down, regulating its reception in the consistories; viz.—

It cannot be admitted alone (*a*). It must not (*b*) be ambiguous. It need not apply to time and place (*c*).

When made under fear of death (*d*), but afterwards retracted, it has been received against the party making the confession.

The confession of the paramour (*e*) is evidence to prove the fact of adultery, and in a case where criminal intention is fully proved, and nothing but the consent of the other party is wanting, the conduct of such a person is evidence of a most stringent kind that

(*x*) Hamerton v. Hamerton, Hagg. R. 2, p. 8.

(*y*) Harris v. Harris, Hagg. R. 2, p. 409.

(*z*) Williams v. Williams, Hagg. C. R. 1, p. 304.

(*a*) Searle v. Price, Hagg. C. R. 2, p. 189. Mortimer v. Mortimer, ib. 2, p. 316.

(*b*) Williams v. Williams, ib. 1, p. 304.

(*c*) Burgess v. Burgess, ib. 2, p. 227.

(*d*) Mortimer v. Mortimer, ib. 2, p. 315.

(*e*) Soilleux v. Soilleux, ib. 2, p. 376.

the act which he was always attempting has actually taken place.

A declaration of the paramour (*f*), in the wife's absence, that she had committed adultery is not admissible, but a declaration made in her presence and confirmed by her is.

A *particeps criminis* is a competent witness (*g*).

I have considered it proper to make these preliminary observations respecting the most important principles of law which apply to suits for divorce by reason of adultery, before entering on the practical forms used therein.

A suit of this nature commences by primary citation, under seal of the matrimonial court, at the instance of the innocent consort.

The citation is in the following form ; viz. :—

### *Citation.*

Charles James, by Divine permission Bishop of London,  
to all and singular clerks and literate persons,  
whomsoever and wheresoever, in and throughout  
our whole diocese of London, greeting :

Citation for  
divorce by  
reason of  
adultery.

We hereby authorize, empower, and strictly enjoin  
and command you, jointly and severally, peremptorily  
to cite, or cause to be cited, Edward Heaviside, of the  
parish of \_\_\_\_\_, in the city of London, and our  
diocese aforesaid, to appear personally or by his proc-  
tor, duly constituted, his surrogate, or some other  
competent judge in this behalf, in the Common Hall of

(*f*) Croft v. Croft, Hagg. R. 2,  
p. 318.

(*g*) Forster v. Forster, Hagg.  
C. R. 1, p. 148.

Doctors Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after he shall have been served with these presents, if it be a general session, by-day, extra or additional court-day of our said court; otherwise on the general by-day, extra or additional court-day, then next ensuing, at the hour of the sitting of the court, and there to abide during its continuance, then and there to answer to Sarah Heaviside, his lawful wife, in a certain cause of divorce or separation from bed, board, and mutual cohabitation, by reason of adultery by him, the said Edward Heaviside, committed; and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Sarah Heaviside, and what you shall do, or cause to be done, in the premises, you shall duly certify our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents. Dated at London, this       day of       , in the year of our Lord 18       , and in the year of our translation.

The libel is as follows:—

### *Libel.*

Libel for divorce by reason of adultery.  
First.

In the name of God, amen, &c.

That in the months of June, July, and August, in the year of our Lord one thousand eight hundred and twenty-five, the said Alexander Grant, Esquire, being then resident in Madras, in the East Indies, a bachelor, and free from all matrimonial contracts and engage-

ments, made his courtship in the way of marriage to the said Maria Theresa Grant, then Maria Theresa de Champ, a spinster, and also free from all matrimonial contracts and engagements, who received such the courtship of him, the said Alexander Grant, and consented to be married to him; and that accordingly, on or about the twentieth day of the said month of August, one thousand eight hundred and twenty-five, they, the said Alexander Grant, who then was, and still is, a member of the Church of Scotland by law established, and Maria Theresa Grant, then Maria Theresa de Champ, were lawfully joined together in holy matrimony according to the rites and ceremonies of the Church of Scotland by law established, at Madras aforesaid, by the Reverend George James Lawrie, an ordained minister of the Church of Scotland as by law established, appointed by the United Company of Merchants of England, trading to the East Indies, to officiate as chaplain within the presidency of Madras aforesaid, who then and there pronounced them to be lawful husband and wife respectively.

That from and immediately after their marriage aforesaid, the said Alexander Grant and the said Maria Theresa Grant lived and cohabited together at board and bed, as lawful husband and wife; and that they have had issue of their said marriage six children, two boys and four girls, all of whom are still living, save a boy very recently dead. That they so lived and cohabited together at Madras aforesaid, and at other places in India, then at different places in this country, afterwards again (to wit, at Bombay and elsewhere,) in India, and at Macao, in China. That in the month of May, one thousand eight hundred and thirty-seven, the said

Second.

Alexander Grant and his said wife left Macao for England, where they arrived and were landed, to wit at Brighton, in the month of November in that year. That the said Alexander Grant then took a furnished house in Regency Square, Brighton, where he and his said wife also lived and cohabited as aforesaid, until the month of February, one thousand eight hundred and thirty-eight, when the said Alexander Grant finally ceased to live and cohabit with his said wife, for the reasons and under the circumstances hereinafter pleaded. And the party proponent doth expressly allege and propound, that ever since their marriage aforesaid, the said Alexander Grant and Maria Theresa Grant (theretofore Maria Theresa de Champ, spinster,) have constantly owned and acknowledged each other as lawful wife and husband respectively; and that as and for such they the said parties have ever since been, and now are, commonly accounted, reputed, and taken, by and amongst their relations, friends, and acquaintance.

Third.

That the said Alexander Grant and his said wife sailed from Macao as aforesaid, as passengers on board the merchant ship Lord Lowther, of which ship the said Alexander Grant was the sole owner; and that the said ship, during her said homeward voyage, was under the command of Arthur Vincent, formerly an officer in the service of the East India Company, whom the said Alexander Grant had appointed at Macao to take the command of her for and during such voyage. And the party proponent doth expressly allege and propound, that shortly after the said ship had left Macao as aforesaid, the said Arthur Vincent, (who, previously to taking the command of her, had only been slightly acquainted with the said Alexander Grant and his wife,

the said Maria Theresa Grant,) began to pay particular attentions to the said Maria Theresa Grant, who on her part encouraged and appeared pleased with the same ; so that they, the said parties, soon became upon a very intimate and familiar footing with each other. That frequently during the said voyage, from and after such time, the said Arthur Vincent and Maria Theresa Grant sought occasions of being, and were alone together, unknown to the said Alexander Grant, in the cuddy, and also in the dressing and sitting cabins of the said Maria Theresa Grant, and in other parts of the said ship, particularly at times when the said Alexander Grant was walking the deck, which he was in the daily habit of doing for hours at a time, or had retired to sleep, as was also his daily habit, to his own and his said wife's sleeping-cabin, after dinner. That on some occasions, when alone together, the said Arthur Vincent and the said Maria Theresa Grant were observed sitting close to and in earnest conversation with each other, and appeared much embarrassed and confused on finding that they were so observed. That on other occasions the said Arthur Vincent was seen kissing and taking personal liberties with the said Maria Theresa Grant ; and that the whole conduct and demeanour of the said parties towards each other soon became and was such as to attract the notice of and be the topic of conversation amongst the mariners and others on board the said ship. And the party proponent doth expressly allege and propound, that on some occasions of their being so alone together as aforesaid, they the said Arthur Vincent and Maria Theresa Grant had the carnal use and knowledge of each others bodies, and thereby committed the foul crime of adultery.

Fourth.

That a day or two previously to the said ship, Lord Lowther's, arrival off Brighton, in the month of November, one thousand eight hundred and thirty-seven as aforesaid, the said Maria Theresa Grant said to the said Arthur Vincent, in the presence of Margaret Jamieson, one of her servants, (a nursery maid,) that she should like to hear from him how he found his intended bride, (it being generally known on board the ship that he was engaged to be married on his return to England,) when he got ashore. That shortly after, the said Maria Theresa Grant, being then alone with the said Margaret Jamieson, told her that the said Arthur Vincent had promised to write her a letter containing the requested information, but added, "that as Captain Grant," (thereby meaning the said Alexander Grant, her husband,) "did not like the said Arthur Vincent, she had begged him to enclose such letter under a cover, addressed to her the said Margaret Jamieson." And the party proponent doth expressly allege and propound, that whilst at the Norfolk Hotel at Brighton, where the said Alexander Grant and his said wife stayed for a few days after landing at Brighton, as aforesaid, previously to their occupation of the aforesaid house in Regency Square, Brighton, the said Margaret Jamieson received a letter addressed to the said Maria Theresa Grant, (enclosed in a blank cover or envelope, addressed to herself,) and forthwith delivered such letter to her the said Maria Theresa Grant. And the party proponent doth further allege and propound, that such letter was written, addressed, and sent to her the said Maria Theresa Grant, by and from the said Arthur Vincent, as she herself afterwards admitted to the said Margaret Jamieson; and that the



same having been so written, addressed, and sent to her, was unknown to and kept a secret from her husband, the said Alexander Grant. That the said letter, if not destroyed, now remains in the custody or possession of the said Maria Theresa Grant.

That the said Arthur Vincent went to Brighton on Fifth. the said twentieth day of December last. That he slept at the Albion Hotel there, and at about eleven or twelve o'clock on the following day proceeded to the house of the said Alexander Grant, in Regency Square, Brighton. That the said Alexander Grant was then absent therefrom, having gone to London on the day before. That the said Arthur Vincent being so told, inquired for the said Maria Theresa Grant, and thereupon was shown up into the drawing-room, in front of the said house, where the said Maria Theresa Grant then was. And the party proponent doth expressly allege and propound, that from such time until dinner-time on the same day, which was six o'clock, the said Arthur Vincent and Maria Theresa Grant were for the most part alone together, either in the said front drawing-room, or in a room called the back drawing-room adjoining thereto, and communicating therewith by folding doors; into which back drawing-room a sofa, which usually stood in the front drawing-room, was removed by her the said Maria Theresa Grant's orders, at between one and two o'clock on that day by the servant, for whom she rang the bell at that time, and whom she then also ordered to bring up luncheon. And the party proponent doth further expressly allege and propound, that the said Arthur Vincent and the said Maria Theresa Grant, whilst so alone together on that day, had the carnal use and knowledge of each

others bodies, and thereby committed the crime of adultery.

Sixth.

That about one hour after the said Arthur Vincent's arrival at the house of the said Alexander Grant, as pleaded in the next preceding article, the said Maria Theresa Grant requested Robinson, spinster, an intimate friend of her's, who was then at the house on a morning visit, to take out her four eldest children, and the aforesaid Margaret Jamieson to take out the two younger children for a walk. That the children all went out accordingly with the said Robinson and Margaret Jamieson, to wit, about twelve or one o'clock, on the said twenty-first day of December, and remained out until about two o'clock, when they returned home, it being their usual dinner-hour. And the party proponent doth further allege and propound, that the said Maria Theresa Grant had never requested the said Miss Robinson to take out any of her children on any other or former occasion.

Seventh.

That about four o'clock in the afternoon of the said twenty-first day of December, the servant of the said Alexander Grant, who was then going up stairs with a lighted stair-lamp, saw the said Arthur Vincent, the said Maria Theresa Grant, and her youngest child, (of the age of four years only,) within her the said Maria Theresa Grant's bed-room—the bed-room door being open at such time. Also that the said servant, about half an hour before dinner on the same day, went into the front drawing-room to attend to and see that the fire and table-lamp were burning. That the said Arthur Vincent and Maria Theresa Grant were not in the said front drawing-room at such time, but were seen by the said servant sitting together in the back

drawing-room, (to wit, on the sofa which had been removed into it from the front drawing-room as aforesaid,) in which back drawing-room there was neither a fire nor any lamp a-light—the said Arthur Vincent's arm being round the waist of the said Maria Theresa Grant, and the said parties at the time being in earnest conversation with each other. That the said Maria Thesesa Grant, immediately on perceiving that they were so observed, got up from the sofa and then gave the servant orders to light the lamp in the back drawing-room.

That the said Arthur Vincent dined at the house of the said Alexander Grant, on the said twenty-first day of December, and spent the evening there, and also slept there on the night of that day. That, as for the purpose of his so doing, the said Maria Theresa Grant in the afternoon of that day told the aforesaid Margaret Jamieson to hire a French bed for the night, of a person of the name of Hannah Stead, who acted as agent for the owner of the said house in Regency Square, and to have it put up for the said Arthur Vincent, in the dressing-room of the said Alexander Grant, which was below stairs, and which said bed was put up in the said dressing-room accordingly. That on the said night the said Arthur Vincent and the said Maria Theresa Grant were alone, naked together in one and the same bed, and committed adultery. Eighth.

That although it was usual for the said Alexander Grant and his said wife, whether they were alone or had visitors, to breakfast in their dining-room, the said Maria Theresa Grant, on the morning of the twenty-second of December, expressly desired that breakfast should be prepared for herself and the said Arthur Ninth.

Vincent in the back drawing-room. That the said Arthur Vincent and the said Maria Theresa Grant accordingly breakfasted alone together in the back drawing-room, and from such time remained for the most part alone together in such room until about two o'clock, at which hour the said Arthur Vincent left Brighton for London by a stage-coach, in which, in the course of the morning, he had desired the man-servant of the said Alexander Grant to take him a place. And the party proponent doth expressly allege and propound, that whilst so alone together in the said back drawing-room, on the said twenty-second of December, they the said Arthur Vincent and Maria Theresa Grant had the carnal use and knowledge of each others bodies, and thereby committed the crime of adultery.

Tenth.

That the said Alexander Grant, on his return to Brighton a few days afterwards, was informed that the said Arthur Vincent had been at Brighton; that he had dined there one day with the said Maria Theresa Grant, and had called to take leave of her on the next day, previous to his return to London; but that he the said Alexander Grant was not informed, nor was at all apprized of any or either of the other circumstances connected with the said Arthur Vincent's visit to his said wife, hereinbefore pleaded, and in particular not that the said Arthur Vincent had, during his absence therefrom, slept or passed the night in his house. And the party proponent doth expressly allege and propound, that the said Alexander Grant being about a few days after to settle an account with the aforesaid Hannah Stead, the said Maria Theresa Grant, in order to conceal from her said husband the fact of the said Arthur Vincent having so passed a night in his house,

sent word to the said Hannah Stead not to include in her said account the hire of the said bed, which had been taken down and returned to the person from whom the said Hannah Stead had hired it on behalf of the said Maria Theresa Grant, on the same day that the said Arthur Vincent left Brighton as aforesaid, and promising herself to pay for the hire or use of the same, and which she afterwards did accordingly.

That the said Maria Theresa Grant, on or about the Eleventh.  
eighteenth day of January, one thousand eight hundred and thirty-eight, wrote, addressed, and sent by the public post, a letter to the said Arthur Vincent, congratulating him, for herself and her husband, on his then recent marriage, of which they had just heard, and offering him a room at their house, if he could make it convenient to pay a passing visit to Brighton, accompanied by his bride. That the said Alexander Grant had consented to his wife writing a letter of that tenor to the said Arthur Vincent, on her saying that it was a mere compliment that was due to him for his attention to them during their home voyage; and that such letter, when written, was addressed to the said Arthur Vincent, at the Jerusalem Coffee-house in Cornhill, London, (a coffee-house much frequented by persons connected with the East India shipping,) and where the said Arthur Vincent was accustomed to order letters to be directed to him, and to call and take the same. And the party proponent doth expressly allege and propound, that on the eighth day of February following, the said Alexander Grant being in London at the said coffee-house on business of his own, in consequence of no answer having been received to the said

letter, so written by his said wife, and addressed as aforesaid, examined the pigeon-holes or usual receptacles at the said coffee-house, for letters addressed to subscribers, and therein found the said letter, together with three other letters addressed to the said Arthur Vincent; and, immediately recognizing the superscriptions thereon to be in the handwriting of his said wife, and it being wholly unknown to him that his said wife had ever written to the said Arthur Vincent any other than the letter hereinbefore pleaded, he then took possession of the same, and having opened and partially read one of the said letters, was so much astonished and distressed at the contents thereof as to be unable to finish reading the same; and he thereupon immediately proceeded to the offices of his agents, Messrs. Gardner, Urquhart, and Company, Saint Helen's Place aforesaid, where he finished reading the aforesaid letter, and opened and read the others, and, whilst he was so doing, and during his stay in the said offices, was observed to be in a state of great agitation and distress; but that the said Alexander Grant did not then disclose to any person in the said offices either the tenor or contents thereof, or from or to whom they had been written or addressed, or how he had obtained possession of the same. And the party proponent doth further allege and propound, that the said three letters had been written, addressed, and sent by the public post, by the said Maria Theresa Grant, to the said Arthur Vincent, on or about the twenty-third and twenty-ninth days of December and first day of January last, utterly unknown to the said Alexander Grant, her husband. That the fact of such four letters, addressed to the said Arthur Vincent, being deposited

for him in the said pigeon-holes at the Jerusalem Coffee-house, was well known to Alexander Miller, the clerk of the said coffee-house, who had frequently seen the same therein.

That in part supply of proof of the premises in the next preceding article pleaded, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit, hereto annex, and pray to be here read and inserted, and taken as part and parcel hereof, five paper writings, marked respectively Nos. 1, 2, 3, 4, and 5; and doth allege and propound the said exhibit No. 1 to be the original letter which was written, addressed, and sent by the said Maria Theresa Grant, by and with the consent of the said Alexander Grant, to the said Arthur Vincent, on or about the eighteenth day of January last; and the said exhibits Nos. 2, 3, and 4, to be the three original letters which were written, addressed, and sent by the said Maria Theresa Grant, unknown to her said husband, to the said Arthur Vincent, as hereinbefore pleaded. That the whole body, series, and contents of the said several exhibits Nos. 1, 2, 3 and 4; the subscription, "Maria Grant," to the said exhibit marked No. 1; and the subscriptions "M. G." to the said exhibits marked Nos. 2, 3, and 4, and the superscriptions thereon respectively, were and are of the proper handwriting and subscription of the said Maria Theresa Grant, the party in this cause, and are so well known or believed to be by divers persons of good faith and credit, who are well acquainted with her manner and character of handwriting and subscription, from having seen her write, and write and subscribe her name and the initial letters thereof to writings, or by other means. That

Twelfth.

by "My dear Captain Vincent," and "Captain Arthur Vincent," to whom the said exhibit No. 1 is addressed, and "My dearest Arthur," and "Captain Vincent," and "Captain Arthur Vincent," to whom the said exhibits marked Nos. 2, 3, and 4 are respectively addressed, was meant and intended Arthur Vincent, who was the master or commander of the said ship Lord Lowther mentioned in several of the preceding articles of this libel, and with whom the said Maria Theresa Grant committed adultery, as therein pleaded. And the party proponent doth further allege and propound the said exhibit marked No. 5 to be a true and faithful notarial translation of such parts of the said exhibits Nos. 1, 2, 3, and 4 as are in the French language.

Thirteenth.

That on the day after the said Alexander Grant had become possessed of the said letters as aforesaid, to wit, on the ninth day of February, one thousand eight hundred and thirty-eight, he communicated his discovery of the same and their contents to several of his friends then in London, by whose advice, in the evening of that day, he returned to Brighton, accompanied by John Macvicar, one of such friends, and by Thomas Whalley Bolton, his solicitor. That on the morning of the following day, to wit, the tenth day of the said month of February, the said Alexander Grant, accompanied by the said John Macvicar and Thomas Whalley Bolton, went to his the said Alexander Grant's house, when the said Alexander Grant and John Macvicar immediately proceeded up stairs into the bedroom of the said Maria Theresa Grant, and other rooms, in order there to make search for any letters which the said Arthur Vincent might have written to her the said Maria Theresa Grant; whilst the said



Thomas Whalley Bolton was introduced unto and remained with the said Maria Theresa Grant alone in the drawing-room. And the party proponent doth further expressly allege and propound, that the said Thomas Whalley Bolton having, in answer to inquiries then made by the said Maria Theresa Grant, as to the occasion of her said husband's return, and what was then going forward in the house, informed her of the detection of her aforesaid correspondence with the said Arthur Vincent; she the said Maria Theresa Grant thereupon repeatedly, and with much vehemence of manner, denied that she had ever written more than one letter, and that with and by her husband's knowledge and consent, to the said Arthur Vincent, and asserted that if there were any other letters purporting to have been written by her to the said Arthur Vincent, they were forgeries, or a conspiracy against her, or to that effect. That after some time the said Alexander Grant and John Macvicar joined the said Maria Theresa Grant and the said Thomas Whalley Bolton in the drawing-room, when the said Alexander Grant stated, as the fact was, that he had just discovered that the said Arthur Vincent had slept in his dressing-room on the twenty-first day of December last, as hereinbefore pleaded; which the said Maria Theresa Grant did not deny. That he also then produced and shewed to the said Maria Theresa Grant the aforesaid letters or exhibits hereto annexed, marked Nos. 2, 3, and 4, on seeing which she, the said Maria Theresa Grant, said or exclaimed, "Oh, I thought all these letters had been received;" from and after which she no longer denied having written the same, only declaring that she had never committed the crime (meaning of adultery) with

the said Arthur Vincent. And the party proponent doth further expressly allege and propound, that the said Alexander Grant, disbelieving such the declarations of the said Maria Theresa Grant, hath never since cohabited with, but hath lived wholly separate and apart from his said wife.

Fourteenth. That shortly after the premises in the next preceding article pleaded, the said Alexander Grant brought his action in her Majesty's Court of Common Pleas against the said Arthur Vincent, for the damages sustained by him, by reason of the said Arthur Vincent's criminal conversation with his wife, the said Maria Theresa Grant. That the said Arthur Vincent not pleading to the said action, he, the said Alexander Grant, obtained a judgment against the said Arthur Vincent in default thereof. That thereupon a writ issued from her Majesty's said Court of Common Pleas, directed to the sheriff of the county of Middlesex, to inquire what damages the said Alexander Grant had sustained by reason of the premises complained of; and that an inquisition was accordingly taken before Sir George Carroll, Knight, and Sir Moses Montefiore, Knight, at the Sheriffs' Office, in Red Lion Square, in the county aforesaid, sheriff of the said county of Middlesex, on the eighteenth day of April, one thousand eight hundred and thirty-eight, by a special jury duly impannelled and sworn; by which jury the said damages were assessed at the amount of five hundred pounds, besides costs.

Fifteenth. That in part supply of proof of the premises in the next preceding article pleaded, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex, and pray to be here read and inserted, and taken as part and parcel

hereof, a certain paper writing marked No. 6 ; and doth allege and propound the same to be and contain a true copy of the final judgment given in the said cause lately depending in Her Majesty's Court of Common Pleas between the said Alexander Grant and Arthur Vincent, mentioned in the next preceding article. That the same has been faithfully extracted from the original roll in the record office of the said court, and carefully collated with its original now remaining therein, and agrees therewith. That all and singular the contents of the said exhibit were and are true ; that all things were had and done as therein contained ; and that Alexander Grant, therein mentioned as the plaintiff, and Maria Theresa Grant, his wife, therein also mentioned as the person with whom the said Arthur Vincent, the defendant, had carried on a criminal correspondence, and Alexander Grant and Maria Theresa Grant, wife of the said Alexander Grant, the parties in this cause, were and are the same persons, and not divers ; and that Arthur Vincent, against whom the said action was brought, and Arthur Vincent with whom the said Maria Theresa Grant committed the crime of adultery, as pleaded in several of the preceding articles of this libel, was and is one and the same person, and not divers.

Pleads the residence of the said Maria Theresa Grant in the district of Saint Mark, Kennington, in the county of Surrey, and diocese of Winchester, and province of Canterbury. Sixteenth.

Pleads the jurisdiction of the court.

Seventeenth.

That all and singular, &c.

Eighteenth.

The same proceedings are taken with regard to the admission of the libel, as in the causes before described. On its admission, the proctor for the defendant is bound by the canon to give a negative issue, in order to prevent the possibility of the parties colluding to deceive the court. He is also bound at the same time to admit or deny the marriage pleaded in the libel, and if such marriage is denied, a time is assigned to prove those articles only which plead it, and the question of marriage is decided before proof of the other facts is attempted. If the marriage is admitted, the usual term probatory is assigned to substantiate the averments of the libel. No answers can be taken to the allegations of adultery.

Amongst the peculiarities of this proof may be classed the confrontation of the parties, which occasionally becomes necessary, in evidence of identity.

This confrontation is enforced by a decree or process of the following tenor:—

### *Decree of Confrontation.*

Decree of  
confrontation.

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted. To all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the whole province of Canterbury, greeting:

Whereas we, rightly and duly proceeding in a cause of divorce or separation from bed, board, and mutual cohabitation, by reason of adultery, now depending before us in judgment, by virtue of letters of request under the hand and seal of the Very Reverend Thomas

Hill Lowe, Clerk, Master of Arts, Dean of the Cathedral Church of Saint Peter, in Exeter, lawfully constituted, between George Savage Curtis, of the parish of East Teignmouth, in the county of Devon and peculiar jurisdiction of the Venerable the Dean and Chapter of the Cathedral Church of Saint Peter, in Exeter aforesaid, the party promoting the said cause on the one part, and Emma Curtis, his lawful wife, of the same parish, county, and peculiar jurisdiction, the party accused and complained of, on the other part, have, at the petition of the proctor of the said George Savage Curtis, alleging that it is necessary that the said Emma Curtis should be confronted with divers credible witnesses, to be produced, sworn, and examined touching the matters at issue in the said cause, decreed the said Emma Curtis to be cited and called to appear in judgment on the day, at the time and place, to the effect and in manner and form hereinafter mentioned (justice so requiring). We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Emma Curtis to appear personally before us, our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the by-day after Trinity Term, to wit, Monday, the twenty-fourth day of June, one thousand eight hundred and forty-four, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the said court, then and there to undergo a confrontation with divers credible witnesses, to be in this cause then and there produced and sworn; and further to do and

receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said George Savage Curtis; and what you shall do, or cause to be done, in the premises, you shall duly certify us, our surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, this fourth session of Trinity Term, to wit, Saturday, the fifteenth day of June, in the year of our Lord, one thousand eight hundred and forty-four.

After the fact of marriage has been admitted or proved, the husband is compelled in this and all other matrimonial suits, either of divorce or nullity, to aliment or pay for the maintenance of his wife, *pendente lite*, as well as the costs of the suit (*h*).

There is no fixed rule as to this allowance (*i*), which is technically called alimony, though it is usually about one-fifth of the annual income of the husband. The proportion, however, may vary according to the circumstances of the parties, being in the discretion of the court.

The allowance is less than that granted for permanent alimony (*k*), the wife being bound to live, during the dependence of the suit, in a state of retirement or seclusion.

If the parties cannot agree upon the amount, application must be made to the court for a judicial allotment. To enable the court to do so, the wife must file

(*h*) *Bird v. Bird*, Lee R. 1, p. 209. *Smyth v. Smyth*, Add. R. 2, p. 254; Add. R. 3, p. 63.

(*i*) *Rees v. Rees*, Phill. R. 3, p. 389. *Hawkes v. Hawkes*, Hagg. R. 1, p. 526.

(*k*) *Rees v. Rees*, ante. *Otway v. Otway*, Phill. 2, p. 109.

an allegation of faculties, or a plea explanatory of her husband's means and fortune. This allegation is in the following form ; viz. :—

*Allegation of Faculties.*

In the Consistory of London.

Allegation  
of faculties.

On the fourth session of Michaelmas Term, to wit, Friday the 6th day of December, 1844.

**LEGGE against LEGGE.**

On which day Orme, in the name, and as the lawful proctor of the said Sarah Legge, the lawful wife of Henry Legge, and under that denomination, and by all better and more effectual ways and means, and to all intents and purposes in the law which may be most beneficial to his said party, said, alleged, and in law articulately propounded, as follows, to wit.

That the said Henry Legge has for many years, and now continues to carry on, at Nos. 143 and 144, Old Street, in the parish of Saint Luke, in the county of Middlesex, the trade or business of a manufacturer of and dealer in cigars. That he employs, or lately employed, in the said trade, one shopman, one porter, and twenty apprentices, and also a man to overlook the said apprentices ; and that he also employs two commission travellers. That the net annual income and profits arising from such business, after deducting all expenses of carrying on same and other outgoings, amount on an average to the sum of £1,000 or £800 per annum, or thereabouts, or at least £600, or some other large sum of lawful money of Great Britain ; and this was and is true, public, and notorious ; and so much the

First.

said Henry Legge doth know in his conscience to be true ; and the party proponent doth allege and propound of any other annual income as shall appear from the lawful proofs to be made in this cause, and every thing in this and the subsequent articles of this allegation contained, jointly and severally.

Second.

That the said Henry Legge now is or lately was possessed of cash in the hands of bankers, or other persons in trust for him, and also in his own possession, amounting in the whole to the sum of £1,000, or some other large sum of lawful money of Great Britain ; and this was and is true, public, and notorious ; and the party proponent doth allege and propound as before.

Third.

That divers persons are in debt to the said Henry Legge in several sums of money, amounting in the whole to the sum of £3,000, or at least £2,500, or some other large sum of lawful money of Great Britain ; and this, &c.

Fourth.

That the said Henry Legge now is or lately was possessed of a valuable stock in trade for carrying on his aforesaid business of a cigar manufacturer, amounting in value to the sum of £2,000, or some other large sum of lawful money of Great Britain ; and this, &c.

Fifth.

That the said Henry Legge now is or lately was possessed of household furniture, plate, linen, china-ware, horses, and other effects, altogether of the value of £200, or thereabouts, of lawful money of Great Britain ; and this, &c.

Sixth.

That the said Henry Legge is possessed of, or entitled to, several capital sums of money standing in his own name, or in the name or names of some other person or persons, in trust for him, in some or one or more of the public stocks, funds, or securities, or the stock of



the Bank of England, or of the East India Company, or some other security, to the amount altogether of the sum of £1,000, or some other sum, of lawful money of Great Britain; and this, &c.

That all and singular the premises were and are true, public, and notorious; and so forth. Seventh.

In the Arches Court of Canterbury.

On, &c.

*Allegation  
of faculties.*

*KEMPE against KEMPE.*

On which day, &c.

That the said John Arthur Kempe, the other party in this cause, was and is entitled to, and receives, full pay as a Colonel in the service of the Honourable the East India Company, and is also Commander or Governor of some fort or station in the East Indies, and derives therefrom an annual income of £1,500, or thereabouts, clear of all deductions; and this, &c. First.

That the said John Arthur Kempe was and is possessed of freehold, copyhold, and leasehold estates, houses, lands, tenements, or hereditaments, in or near the county of Cornwall, from which he derives an income of £600, £500, or at least £400 yearly, and every year, clear of all deductions; and this, &c. Second.

That the said John Arthur Kempe was and is possessed of moneys invested in some or other of the public funds, and at interest, on mortgage, or other security, amounting in the whole to the sum of £30,000, £25,000, or at least £20,000, and from which he, the said John Arthur Kempe, derives yearly and every year an income of £1,500, £1,250, or at least £1,000, clear of all deductions whatever; and this, &c. Third.

Fourth.

That the said John Arthur Kempe was and is possessed of moneys at his bankers, household furniture, plate, wines, horses, and carriages, and other personal estate to the amount or value of £6,000, £5,500, or at least £5,000; and this, &c.

Fifth.

That all and singular, &c.

This allegation having been brought in and admitted, the answers of the husband are decreed. These are generally accepted by the wife (*l*), though she is not compelled to acquiesce in the valuation of her husband, and may examine witnesses if she thinks proper.

By these answers (*m*), which are taken strongly against the respondent and other evidence, (if brought in, though the latter is discouraged,) the court is guided in making an allotment of alimony, which is generally decreed (*n*) to commence from the return of the citation, unless where the latter has been improperly delayed.

All sums paid subsequently to that return (*o*) are allowed as in part payment of the alimony.

In appeals (*p*), alimony is usually given from the date of the sentence and the appeal, provided due diligence has been exerted; but otherwise from the return of the inhibition.

Alimony (*q*), *pendente lite*, may be reduced on proof that the husband is no longer in a condition to aliment his wife at the rate originally assigned by the court.

(*l*) *Brisco v. Brisco*, Hagg. C. R. vol. 2, p. 200.

(*m*) *Robinson v. Robinson*, Lee's R. vol. 2, p. 593.

(*n*) *Loveden v. Loveden*, Phill. R. vol. 1, p. 209. *Bain v. Bain*, Add. R. vol. 2, p. 253.

(*o*) *Hamerton v. Hamerton*, Hagg. R. vol. 1, p. 23.

(*p*) *Loveden v. Loveden*, Phill. R. vol. 1, p. 210.

(*q*) *Cox v. Cox*, Add. R. vol. 3, p. 276. *De Blaquiere v. Blaquiere*, Hagg. R. vol. 3, p. 322.

And in like manner (*r*), it is subject, on appeal, to the revision of the superior tribunal.

However small, precarious, or uncertain the income of the husband may be, it is, notwithstanding, always liable to a deduction for alimony. The only exemption that occurs is on the husband suing *in forma pauperis*.

There is one occasion (*s*), however, where the court suspends its decree; viz., when the wife is in possession of money or other valuables belonging to the husband, and will not deliver up or otherwise account for them. Until this is done, the court will make no order for alimony.

All arrears of alimony and costs (*t*) must be paid up before the cause comes for hearing. The usual assignation under these circumstances, is to hear the cause, on *costs and alimony* being first paid.

The same proceedings can be adopted in these suits, as I have described as applicable to criminal suits, in regard to counterpleading, &c.

The bars to a divorce, on the ground of adultery, are chiefly, condonation (*u*) of, or acquiescence (*x*) in, the conduct of the accused party, or actual adultery on the part of the promoter (*y*).

When the cause is assigned for hearing, the party prosecuting, (if the husband,) is required by the canon to give the following bond in one hundred pounds with one surety.

(*r*) Street v. Street, Add. R. vol. 2, p. 1.

(*s*) Lloyd v. Lloyd, 7th August, 1839, Cons. of London. An application for alimony was rejected until the wife should account for certain securities deposited with her by the husband.

(*t*) Bird v. Bird. Lee's R. vol. 1, p. 572.

(*u*) Ferrers v. Ferrers, Hagg. C. R. 1, p. 130.

(*x*) Crewe v. Crewe, Hagg. R. 3, p. 125.

(*y*) Forster v. Forster, Hagg. C. R. 1, p. 147.



The decree of the court is embodied in the following sentence (z) :—

*Sentence.*

In the name of God, amen. We, Joseph Phillimore, Doctor of Laws, Commissary General of the Venerable the Dean and Chapter of the Cathedral Church of Saint Paul, London, in and throughout their whole peculiar jurisdiction, lawfully appointed, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed the merits and circumstances of a certain cause of divorce or separation from bed, board, and mutual cohabition, by reason of adultery, now depending before us in judgment, between John Todhunter, of the parish of Saint Pancras, in the County of Middlesex, and peculiar jurisdiction aforesaid, the party agent and complainant of the one part, and Rosa Matilda Todhunter, wife of the said John Todhunter, of the same parish, the party accused and complained of, on the other part, and the parties aforesaid lawfully appearing before us in judgment, by their proctors, and the proctor for the said John Todhunter, praying sentence to be given for, and justice to be done to his said party, and the proctor for the said Rosa Matilda Todhunter, praying justice to be done to his party. And we having first carefully and diligently searched into

Sentence of divorce.

(z) This is more usual than an interlocutory decree. By a standing order of the House of Lords, relative to the bringing in and proceeding on private bills, it is directed, (No. 141,) "that no petition for any bill of divorce shall be presented to the house, unless an official copy of the proceedings, and of a *definitive sentence, a mensâ et thoro* in the Ecclesiastical Court, at the suit of the party desirous to present such petition, shall be delivered upon oath at the bar of the house at the same time."

and considered the whole proceedings had and done before us in this cause, and having observed all and singular the matters and things that by law ought to be observed in this behalf, have thought fit and do thus think fit to proceed to the giving our definitive sentence or final decree in this cause, in manner following, to wit:—Forasmuch as we have by the acts enacted, deduced, alleged, exhibited, pleaded, propounded, and proved in this cause, found out and clearly deduced that the proctor of the said John Todhunter hath sufficiently founded and proved his intention deduced in a certain libel, with two exhibits annexed, given in, and admitted in this cause on his behalf, and now remaining in the registry of this court, (which said libel and exhibits we take and will have taken as if here read and inserted,) for us to pronounce as hereinafter is pronounced, and that nothing at least effectual in law hath, on the part and behalf of the said Rosa Matilda Todhunter been excepted, deduced, exhibited, pleaded, propounded, or proved to defeat such intention. Therefore, we, Joseph Phillimore, Doctor of Laws, the Commissary-General aforesaid, having heard counsel learned in the law, in this behalf, on the part of the said John Todhunter and Rosa Matilda Todhunter respectively, do pronounce, decree, and declare that the said John Todhunter and Rosa Matilda Todhunter, being free from all matrimonial contracts or espousals, (save to each other,) did at the time and place libellate, contract true, pure, and lawful matrimony, between each each other, and did solemnize the same in the face of the church, and afterwards consummated it by carnal copulation, and that the said John Todhunter and Rosa Matilda Todhunter were and are lawful husband and wife,

and for and as such were and are commonly accounted, reputed, and taken to be, and we do also pronounce, decree, and declare (according to the lawful proofs made before us in this cause as aforesaid,) that the said Rosa Matilda Todhunter, after the solemnization and consummation of the said marriage, being altogether unmindful of her conjugal vow, and not having the fear of God before her eyes, but being instigated and seduced by the devil, did, at the times and places pleaded in the said libel, or at some of them, commit the crime of adultery, and did thereby violate her conjugal vow; wherefore, and by reason of the premises, we do pronounce, decree, and declare that the said John Todhunter ought by law to be divorced and separated from bed, board, and mutual cohabition with her the said Rosa Matilda Todhunter his wife, until they shall be reconciled to each other, and we do by these presents divorce and separate them accordingly, (bond having been given by or on the part of the said John Todhunter, according to the tenor of the canon in that behalf made and provided, that he the said John Todhunter shall not contract any other marriage whilst the said Rosa Matilda Todhunter shall be living,) intimating nevertheless, and by such intimation expressly inhibiting, according to the ecclesiastical laws and canons made in that behalf, as well the said Rosa Matilda Todhunter as the said John Todhunter, that neither of them, in the lifetime of each other, shall in any wise attempt or presume to contract any other marriage by this our definitive sentence or final decree, which we give and promulge by these presents.

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## PERMANENT ALIMONY.

THE principles on which the allotment of alimony, *pendente lite*, is made, have been already explained. I will now describe the allotment of permanent alimony after the termination of the suit, which is in some respects materially distinguished from the former, though equally discretionary in the court. It is an allowance made to the innocent wife, when she has proved herself entitled to it, by obtaining a divorce from her husband, on the ground of his cruel or adulterous conduct (*a*).

A much larger proportion is therefore due from the husband's income or property, for permanent alimony, than for alimony pending suit. The court has held that the wife, being separated from the comfort of matrimonial society, and the intercourse of her family, through the misconduct of her husband, should be liberally supported (*b*).

The exact proportion of alimony is in the judicial discretion of the court (*c*), a moiety (*d*), a third (*e*), and even a less proportion has been at times, according to the circumstances of the case, awarded to the wife (*f*).

(*a*) *Cooke v. Cooke*, Phill. R. vol. 2, pp. 41, 42.

(*b*) *Otway v. Otway*, Phill. vol. 2, p. 109.

(*c*) *Ibid.*

(*d*) *Cooke v. Cooke*, Phill. R. vol. 2, p. 40. *Smith v. Smith*, *ibid*, p. 235.

(*e*) *Kempe v. Kempe*, Hagg. R. vol. 1, p. 532.

(*f*) *Blaquiere v. Blaquiere*, Phill. R. 3, p. 258. *Street v. Street*, Add. R. vol. 2, p. 4. *Durant v. Durant*, Hagg. R. vol. 1, p. 528.



Alimony is allotted from year to year, and is decreed from the date of the sentence(*g*). A quarterly payment is generally assigned.

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## CRUELTY.

CRUELTY, proved on the part of either the husband or the wife, entitles the other party to invoke the interference of the matrimonial court, in the form of a divorce *a mensa et thoro* (*a*). In a state of personal danger, no duties can be discharged, as the obligation of self preservation justly takes precedence of them (*b*).

Legal cruelty consists either in the danger of life, limb, or health, or the reasonable apprehension of bodily hurt (*c*). Nothing short of this can be admitted by the court.

The circumstances to which this test must be applied are necessarily so numerous and varied, that an attempt at classification would be perfectly absurd and at the same time of little use.

Cruelty is no bar to a charge of adultery (*d*). It will, however, revive condoned adultery (*e*), and less is

(*g*) Durant v. Durant, ib. 528.  
Blaquiere v. Blaquiere, Hagg. 3,  
p. 329.

(*a*) Evans v. Evans, Hagg.  
C. R. 1 p. 37.

(*b*) Ibid.

(*c*) Ibid.

(*d*) Arkly v. Arkly, Phill. R.  
3, p. 500. Harris v. Harris,  
Hagg. R. 2, p. 376.

(*e*) Worsley v. Worsley, Hagg.  
R. 1, p. 734. Durant v. Durant,  
ibid. p. 745, 765.

required for that purpose than to found an original sentence.

Where cruelty and adultery are both charged against a party, it is not absolutely necessary to prove the former (*f*).

It will be unnecessary to give a form of the citation, as it is identical with that used in the preceding suit, with the exception of the ground of divorce.

The following form will illustrate the libel,—

### *Libel.*

I—— *against* I——.

In the name of God, amen, &c.

First.

That on the 19th day of June, 1834, the said Henry Isaac Blackburn I——, then a bachelor, of the age of twenty-one years and upwards, and the said Sophia I——, then Sophia C——, widow, were lawfully joined together in holy matrimony, according to the rights and ceremonies of the Church of England, as by law established, in the district church of Saint Mary, in the parish of Saint Marylebone, in the county of Middlesex, by the Reverend Thomas L. Ramsden, a Priest or Minister in Holy Orders of the Church of England, or then and there officiating as such, and who then and there pronounced them lawful husband and wife in the presence of divers credible witnesses, and that an entry of such marriage was duly made in the register-book of marriages, kept in and for the said church or district; and this was and is true, and the party proponent

alleges and propounds every thing in this and the subsequent articles of this libel contained jointly and severally.

That in part supply and proof of the premises in the next preceding article pleaded, and to all intents and purposes in the law whatsoever, the party proponent exhibits, hereto annexes, and prays to be here read and inserted, and taken as part and parcel hereof, a certain paper writing, partly written and partly printed, marked A, and alleges and propounds the same to be and contain a true copy of the original entry of the marriage of the said Henry Isaac Blackburne I—— and Sophia I—— in the preceding article mentioned ; that the same hath been faithfully extracted from the Register Book of Marriages kept in and for the said church or district of Saint Mary, in the parish of Saint Marylebone, in the county of Middlesex, for the year 1834, and carefully, collated with the original entry now remaining therein and found to agree therewith ; that all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein contained, and that Henry Isaac Blackburne I—— and Sophia C—— in the said exhibit mentioned, and Henry Isaac Blackburne I—— and Sophia I——, formerly Sophia C——, the parties in this cause, were and are the same persons and not divers ; and the party proponent doth allege and propound as before. Second.

That from and after the solemnization of the said marriage, the said Henry Isaac Blackburne I—— and Sophia I—— lived and cohabited together at bed and board as lawful husband and wife, and consummated their marriage by carnal copulation, but without issue ; that they lived and cohabited together at Montague Third.

Square, in the said parish of Saint Marylebone, and at Croydon, in the county of Surrey, and at Lewisham, in the county of Kent, until the 10th day of September, 1845, when that cohabitation ceased, as hereinafter pleaded; that ever since their said marriage, they, the said parties, have owned and acknowledged each other for lawful husband and wife, and that for and as such they were and are commonly accounted, reputed, and taken, by and amongst their relatives, friends, and acquaintances; and this was and is true, &c.

Fourth.

That in or before the month of February, 1844, the said Henry Isaac Blackburne I—— formed a connexion with a woman, named or passing by or under the name of Barton, who then resided at No. 2, Blackheath Hill, Greenwich; that he frequently visited her at her said residence, and walked out arm-in-arm with her at Greenwich and other places in the neighbourhood; that he also frequently drove her out in his carriage, and in respect of such drives enjoined the strictest secrecy upon the servant who accompanied him; that he also was in the habit, unknown to his said wife, of writing and sending letters to the said Barton, and of supplying her with meat, grocery, and other provisions, and that he also frequently sent her vegetables from his own garden; and this was and is, &c.

Fifth.

That shortly after the said Henry Isaac Blackburne I—— had become acquainted with the said Barton, as pleaded in the next preceding article of this libel, his visits to the said Barton became more frequent; that at length he visited her nearly every day, and often at late hours of the night; that he also passed several nights in each week at her house, and was in the morning frequently seen standing at her bed-room window

in his shirt sleeves, and on other occasions was seen sitting with her at her parlour window, with his arm round her waist; and the party proponent doth expressly allege and propound that on all or most of such visits, divers and great familiarities passed between the said Henry Isaac Blackburne I—— and the said Barton, and that they frequently slept, naked and alone, in one and the same bed, and had the carnal use and knowledge of each others bodies, and committed adultery together, and that he still continues so to sleep with her, and to commit adultery; and this was and is true, &c.

That on or about the \_\_\_\_\_ day of \_\_\_\_\_, Sixth. 1844, the said Henry Isaac Blackburne I—— took the said \_\_\_\_\_ Barton to a fair held at Croydon, in the county of Surrey, and on his return therefrom stopped at his house at Lewisham, and where his said wife then was, and having taken the said \_\_\_\_\_ Barton into the stable, in order to avoid the observation of his said wife, went into his said house and fetched her out a glass of wine and water, and, after she had drunk it, proceeded with the said \_\_\_\_\_ Barton to her house aforesaid, where he remained with her the whole of that night, and on such occasion the said Henry Isaac Blackburne I—— and the said \_\_\_\_\_ Barton slept together, naked and alone, in one and the same bed, and committed adultery together; and this was and is true, &c.

That on or about the \_\_\_\_\_ day of \_\_\_\_\_, Seventh.  
in the said year 1844, the said Henry Isaac Blackburne  
I—— went to a fair held at Charlton, in the county of  
Kent, accompanied by the said \_\_\_\_\_ Barton, who  
was then dressed as a German broom girl; that the

said Henry Isaac Blackburne Ivey and Barton spent the evening together at the said fair, and at a late hour returned together to the house of the said Barton, where they again slept in one and the same bed, naked and alone, and committed adultery together; and this was and is true, &c.

Eighth.

That on or about the eighteenth day of January, 1845, the said Barton removed from Blackheath to a house situate at Dacres Street, in Lee, in the said county of Kent, and where, upon her so doing, the said Henry Isaac Blackburne I—— still kept up his aforesaid adulterous intercourse with her; that he visited her usually many times in the week, and often remained all night at her house, and sometimes for several nights together, and that now, to wit, in the month of January, 1846, he almost entirely lives with the said Barton, at Lee aforesaid; and the party proponent alleges and propounds that during the said Barton's said residence at Lee they, the said Henry Isaac Blackburne I—— and the said

Barton, have very frequently had the carnal use and knowledge of each others bodies, and committed adultery together; and this was and is, &c.

Ninth.

That from the time the said Henry Isaac Blackburne I—— formed the guilty connexion before pleaded, to wit, the month of February, 1844, and until his said wife separated herself from him as hereinafter pleaded, he constantly treated her with the greatest violence and contumely; that he habitually called her an old bitch, a bloody or blasted old bitch, an old bawd, and the like opprobrious names, without the slightest provocation on her part; that he used to destroy the furniture of the house, break the windows, and do other acts of a

nature to alarm or terrify his said wife ; and the party proponent doth expressly allege and propound that in consequence of such the ill-treatment of the said Henry Isaac Blackburne I——, the health of the said Sophia I—— became and still continues to be greatly impaired ; and this was and is true, &c.

That on the evening of the 21st day of December, Tenth. 1844, the said Henry Isaac Blackburne I——, without any provocation on the part of his said wife, struck her as she was sitting on a couch in the drawing-room of their said house at Lewisham, so violent a blow on the eye with the back of his hand, upon which he wore a ring, that her eye was nearly closed, and became and remained black for many days afterwards, and was seen in that state by different persons ; that the said Henry Isaac Blackburne I—— then spat in the face of his said wife, and also threw a tumbler full of hot elder wine over her, and told her that thenceforward he should take his meals in a separate room, which he accordingly did for a long time after ; and this was and is true, &c.

That on the evening of the tenth day of September Eleventh. last, the said Henry Isaac Blackburne I——, after applying many abusive epithets to his said wife, urged her to allow him a further sum of £200 per annum (she having, at the time and in contemplation of the said marriage, as the party proponent expressly alleges and propounds, settled upon him the yearly sum of £100,) and upon her refusing so to do, rushed towards her in an infuriated state, and pressing one of his clenched fists hard upon her forehead, and shaking the other close to her face, roared out, “ Damn you, you bloody

old bitch, it is fortunate for you that I am not drunk to-day," or to that effect ; and then said, seizing her by the arm and thigh, " Shall I throw you out of the window, you bitch ?"—adding, " No, I will not to-day; but the next time I come home in such a temper, especially if I have had any gin, I will not answer for the consequence;" that the said Henry Isaac Blackburne I—— then left the house, and did not return that night; that the said Sophia I—— also the next morning left the said house, and has ever since lived separate and apart from her said husband, but that previous to her so leaving the said house she shewed to , her servant, the marks on her arm produced and left by the violence of the said Henry Isaac Blackburne I——; and this was and is true, &c.

Twelfth.

That the man who formed an adulterous connexion with a woman passing under the name of Barton, in or before the month of February, 1844, at No. 2, Blackheath Hill, and who continued and still continues the same adulterous connection with her at Lee, and who frequently passed the night and slept with her in one and the same bed, naked and alone, and had the carnal use and knowledge of her body, as pleaded in the former articles of this libel, and Henry Isaac Blackburne I——, party in this cause, was and is the same person, and not divers, and the woman whom he so visited and slept with, and of whose body he had the carnal use and knowledge, was not and is not the said Sophia I——, party in this cause, but a different person ; and this was and is true, &c.

Thirteenth.

That, &c. &c.



This suit does not in any respect differ from the proceedings for a divorce on the ground of adultery, except that in the former the answers of the defendant are allowed to be taken to the libel.

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### JACTITATION OF MARRIAGE.

THIS is a suit of very unfrequent occurrence, but as it may at times become a proceeding of great practical utility, it should not be omitted here.

Jactitation may be defined to be a malicious boast or report of marriage, set up or propagated by one individual against another, without truth or justification for it. In such a case, the inconvenience and annoyance to which the injured party is subjected entitle him or her to a remedy in the Ecclesiastical Court; and this remedy consists in a judicial imposition of silence upon the offender, who, in the event of a contumacious infraction of the decree of the court, will be attached for disobedience.

This suit, in some respects, partakes of the nature of a cause of defamation, for in each the party seeks relief against an injurious expression, or series of expressions, impugning his character or *status* in society. The proceeding commences by a citation in the same form as each of the preceding ones, the description of the suit only varying, viz., A. B. is cited "to answer to C. D. in a cause of jactitation of marriage."

A libel is exhibited by the promoter, of the following tenor, viz.—

*Libel.*

Libel of  
jactitation.  
First.

In the name of God, amen, &c.

That the aforesaid Right Honourable Edward Harvey, Lord Hawke, was and is a widower and free, and in no way married to, or united in marriage with, the said Augusta Elizabeth Corri, (falsely calling herself Lady Hawke,) party in this cause, and for and as a person so free and unmarried was and is commonly accounted, reputed, and taken to be, by and amongst his neighbours, friends, and familiar acquaintances; and this, &c.

Second.

That the said Augusta Elizabeth Corri, (falsely calling herself Lady Hawke,) sufficiently knowing the premises, and notwithstanding the same, did, in the several months of October, November, and December, in the year 1818, and in the month of January, and this instant month of February, of the present year 1819, at Welbeck Street, in the county of Middlesex, and in divers other parishes and places in the neighbourhood thereof, or thereto adjoining, and in all, some, or one of the abovementioned times and places, in the presence of several credible witnesses, falsely and maliciously boast, assert, and report, that she was married to, or united in marriage with, the said Right Honourable Edward Harvey, Lord Hawke, whereas in fact no marriage was ever had or solemnized between them; and this, &c.

Third.

That the said Augusta Elizabeth Corri, (falsely calling herself Lady Hawke,) hath been asked and requested to cease, desist, and abstain from her false and mali-

cious boasting, asserting, and reporting, as mentioned in the next preceding article ; and this, &c.

That the said Augusta Elizabeth Corri, (falsely calling herself Lady Hawke,) being as aforesaid asked and requested to cease, desist, and abstain from her false and malicious boasting, asserting, and reporting, hath not in the least, or doth not in the least, at present cease, desist, and abstain therefrom, but with like malice and rashness doth continually, falsely, and maliciously boast, assert, affirm, and report the same, to the no small prejudice of the said Right Honourable Edward Harvey, Lord Hawke, and the pernicious example of others ; and this, &c. Fourth.

That of all and singular the premises it was and is, by and on the part and behalf of the said Right Honourable Edward Harvey, Lord Hawke, as being aggrieved and injured by reason of the said pretended boasting, asserting, and reporting of the said Augusta Elizabeth Corri, (falsely calling herself Lady Hawke,) rightly and duly complained to you the judge aforesaid, for a fit remedy to be had and provided in this behalf and to this court ; and this, &c. Fifth.

Residence, &c.

Sixth.

That all and singular the premises, &c., and also that by this court it may be pronounced and decreed that the said Right Honourable Edward Harvey, Lord Hawke, at and during all the times mentioned in this libel, was and is free, and in no way married to or united in marriage with the said Augusta Elizabeth Corri, (falsely calling herself Lady Hawke,) and that notwithstanding the premises, she, the said Augusta Elizabeth Corri, did, in the years, months, and places Seventh.

libellate, or in some or one of them, falsely and maliciously boast, assert, and report that she was married to, or contracted in marriage with, the said Right Honourable Edward Harvey, Lord Hawke, and that she may be enjoined perpetual silence in the premises, and obliged and compelled to cease, desist, and abstain from such her false and malicious boastings, assertions, and reports, for the future, and that she be condemned in the costs made and to be made in this cause on the part and behalf of the said Right Honourable Edward Harvey Lord Hawke, &c.

The libel having been admitted to proof, the issue is next required of the defendant. If given in the negative, the sworn answers are decreed; and if in these all the positions of the libel are denied, evidence of the *jactitation* is taken. Publication having been prayed on the part of the promoter, it then becomes necessary for the defendant to counterplead, if he or she has any case to set up in defence; and there are three modes of defence to a suit of this kind, viz.:—First, by denying the fact of jactitation;—second, by affirming the representation in question to be true, and that a marriage has actually taken place between the parties: (in which case the proceedings will assume the shape of a cause of nullity of marriage, or of restitution;—) third, by admitting that, though no marriage has passed, yet that the pretension on the part of the jactitant was fully authorized by the complainant, and consequently that the representation or boasting, though false, was not malicious (a).

(a) Hawke v. Corri, Hagg. Cons. Rep. vol. 2, p. 280.

The first case I have mentioned depends mainly on the sort of the evidence put forward by the promoter. If that fails, or scarcely arrives at the proper extent, the dismissal of the defendant follows as a matter of course. In the second case, either a sentence of nullity, or a decree of restitution of conjugal rights, is given, according to the stringency of the proofs in the suit. And in the third case, if the jactitation is clearly shown by the defendant to have been permissive, *i. e.* connived at by the adverse party, the latter is barred of his remedy, and is left to the consequences of his own indiscretion or vice.

If the jactitation can be shewn by the evidence on the libel to have been as malicious and unauthorized as it was false and unjust, and there is no proof on the other side to rebut or weaken this conclusion, the court, in its final decree, enjoins a perpetual silence on the jactitant, and also imposes upon him or her the whole costs of the suit.

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## RESTITUTION OF CONJUGAL RIGHTS.

WHEN cohabitation is suspended on the part of a husband or wife, by his or her own authority merely, without a sufficient reason for the act, the aggrieved consort is entitled to the aid of the ecclesiastical court in enforcing a restoration of the duties of mutual intercourse. This is technically called a restitution of conjugal rights. And to a suit instituted for such a

purpose there is no bar or legal opposition except cruelty or adultery on the part of the promoter. For a deed of separation upon mutual agreement, on account of domestic differences, though containing a covenant not to bring a suit for restitution of conjugal rights, is not regarded by the Court Christian as in any way restraining the exercise of its jurisdiction under these circumstances. The course of proceeding is as follows:—The plaintiff or promoter extracts a citation against the offender. This process is in the same general form as that used in the other matrimonial causes, and enjoins the defendant to appear on a day therein named, and answer to the other “in a cause of restitution of conjugal rights, and further to do, &c.” (a).

The libel is as follows :—

### *Libel.*

Libel for restitution of conjugal rights.  
First.

In the name of God, amen, &c.

That in the months of October, November, and December, in the year 1829, and in the month of January, 1830, the said John Donnithorne Taylor, being then a bachelor, of the age of twenty-one years and upwards, and free from all matrimonial contracts and engagements, paid his courtship and addresses in the way of marriage to the said Elizabeth Henrietta Taylor, then Elizabeth Henrietta Thompson, of the age of eighteen years and upwards, and also free from all matrimonial contracts and engagements, who received such the courtship and addresses of the said John Donnithorne Taylor and

(a) Westmeath v. Westmeath, Hagg. R. 2, p. 115, Supplement.

agreed to be married to him ; and that in pursuance of such agreement, on or about the 13th day of the said month of January, 1830, they, the said John Donni-thorne Taylor and Elizabeth Henrietta Taylor, then Elizabeth Henrietta Thompson, spinster, were lawfully joined together in holy matrimony, according to the rites and ceremonies of the Church of England, as by law established, in the parish church of Edmonton, by the Reverend Thomas Hutton Vyvyan, a priest or minister in holy orders of the Church of England, who then and there pronounced them to be lawful husband and wife, and that an entry of such marriage was duly made in the Register Book of Marriages kept in and for the said parish of Edmonton ; that the names “J. D. Taylor,” and “E. H. Thompson,” respectively subscribed to the said entry of marriage in the Register Book of Marriages as aforesaid, are of the proper hand-writing and subscription of them the said John Donni-thorne Taylor and Elizabeth Henrietta Taylor, then Elizabeth Henrietta Thompson, and are so known to be by divers credible persons, who had often seen them write and subscribe their names, and are thereby become well acquainted with their manner and character of hand-writing and subscription ; and this was and is true, public and notorious, and the party proponent doth allege and propound every thing in this and the subsequent articles of this libel contained jointly and severally.

That in supply of proof of the premises in the next Second. preceding article, and to all intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex, and pray to be here read and inserted, and taken as part and parcel hereof, a paper

writing marked No. 1, and doth allege and propound the same to be and contain a true copy of the entry of the marriage of the said John Donnithorne Taylor and Elizabeth Henrietta Taylor, then Elizabeth Henrietta Thompson, mentioned in the preceding article; that the same hath been faithfully extracted from the Register Book of Marriages kept in and for the said parish of Edmonton, and carefully collated with the original now remaining therein, and agrees therewith in all respects; that all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein mentioned, and that John Donnithorne Taylor and Elizabeth Henrietta Thompson therein mentioned, and John Donnithorne Taylor and Elizabeth Henrietta Taylor, formerly Elizabeth Henrietta Thompson, the parties in this cause, were and are the same persons and not divers; and this was and is true, public, and notorious, and so forth.

Third.

That the said John Donnithorne Taylor and his wife, the said Elizabeth Henrietta Taylor, duly consummated their said marriage, and, from and after the same, lived and cohabited together as lawful husband and wife, among other places at Gouldlands, and afterwards at Woodlands, both in the parish of Edmonton aforesaid, and that from and after their said marriage, they, the said John Donnithorne Taylor and the said Elizabeth Henrietta Taylor, have constantly owned and acknowledged each other as husband and wife, and as and for such respectively were and are commonly reputed and taken by and amongst their relations, friends and acquaintance, and others; and this was and is true, public, and notorious, and so forth.



That notwithstanding the premises herein before Fourth.  
pleaded and set forth, the said John Donnithorne  
Taylor hath ever since the 22d day of June last, to wit,  
of June, 1838, without any just cause refused, and still  
refuses, to permit the said Elizabeth Henrietta Taylor  
to live and cohabit with him the said John Donnithorne  
Taylor, and to render to her conjugal rights, although  
he hath been repeatedly and earnestly entreated so to  
do by her, or on her behalf; and this was and is  
true, public, and notorious, and so forth.

That the said John Donnithorne Taylor was and is Fifth.  
of the parish of Edmonton, in the county of Middlesex,  
and therefore, and by reason of the premises, was and  
is subject to the jurisdiction of this court; and this, &c.

That of and concerning all and singular the pre- Sixth.  
mises, it hath been and is rightly and duly complained  
to you, the vicar-general aforesaid, and to this court;  
and this was and is true, and so forth.

That all and singular the premises were and are true, Seventh.  
public, and notorious, and thereof there was and is a  
public voice, fame, and report, of which legal proof  
being made, the party proponent prays that the marriage  
hereinbefore pleaded and set forth may be pronounced  
for, and that the said John Donnithorne Taylor may be  
compelled by law to take home and receive his wife, the  
said Elizabeth Henrietta Taylor, and render to her con-  
jugal rights, by you and your definitive sentence, or  
final decree, to be made and given in this cause, and  
further, that right and justice may be done to him and  
his party in the premises.

If the party cited has no pretext or desire to prolong  
an useless defence, he may, on appearing to the cita-

tion, declare his readiness to take his wife home, and treat her with conjugal affection, and the court will then make an order accordingly, and assign him to certify his having so done by a certain day. If the other party, on such day, acquiesces in an assertion or certificate to that effect, the suit determines and the defendant is dismissed.

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### NULLITY OF MARRIAGE.

IN these suits, the sentence of the Ecclesiastical Court is merely declaratory, the pretended marriage in question having been, *ipso facto*, null and void from the beginning, in consequence of the legal or canonical defect in or connected with its celebration (a).

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### IMPOTENCE.

Suits of this kind are divided into questions of frigidity on the man's part, and absolute incapacity from natural or accidental malformation on the part of either the man or woman.

It is almost unnecessary to state that the same action appertains to both parties, their rights and duties

(a) Bowzer v. Ricketts, Hagg. C. R. vol. 1, p. 214.

being co-equal, whether the failure is on one side or the other (a).

The existence of incurable impotence, must clearly appear, for where there is a probability of capacity, however slight, the court cannot separate the parties (b). And the impediment must also be shewn to have existed at the time of the marriage, for if it has supervened only it is no ground for nullity (c).

Each of the two divisions of this species of suit has its own peculiarities, arising from the nature of the defect sought to be proved and remedied. To found a suit for nullity of a marriage on the ground of frigidity there must be a triennial cohabitation of the parties before its institution. And this is so imperatively required by the canon law, that if such persons have been a great part of that time absent from each other, the man shall be restored as to that time during which he has been absent (d).

This *triennalis cohabitatio* is not, however, rigidly construed into a living together *de die in diem*, but is understood to mean a general cohabitation only, such as is usual between married persons (e). A suit commenced before the expiration of this period is premature, and will be dismissed by the court on that ground.

The proofs in this suit, are the sworn answers of the husband, his corporal inspection under the directions of the court, by competent medical men, elected and sworn for that purpose, and as a collateral proof, a

(a) *Briggs v. Morgan*, Phill. R. vol. 3, p. 327.

(b) *Welde v. Welde*, Lee. R. vol. 2, p. 586.

(c) *Brown v. Brown*, Hagg. R. vol. 1, p. 523.

(d) *Welde v. Welde*, Lee's R. vol. 2, pp. 585-6.

(e) *Ibid.* pp. 579-582.

similar inspection of the promoter, when she is pleaded to have been a spinster at the time of the asserted marriage, evidence of her virginity presumptively involving the fact of his incapacity for the proper performance of the matrimonial duties (*f*).

This inspection is also submitted to, for the further purpose of shewing that there exists, on the part of the lady, no physical impediment to consummation.

But the court is not bound, under the circumstances of every case, to require the sworn answers of the party and his surgical examination, and to refuse to proceed where they cannot be obtained, as otherwise the man would have only to withdraw out of the reach of its process, and thus defeat the ends of justice by defrauding the woman of her remedy. Accordingly the court, in *Pollard v. Wybourn* (*g*), held that a certificate (twelve years after marriage,) that the woman was *virgo intacta* and *apta viro*, coupled with two several confessions by the man of his incapacity to two medical witnesses, with proof that the woman's health had suffered, was sufficient, though the man, who had removed abroad, had not given in his answers, and had refused to undergo surgical examination.

The foregoing remarks apply to cases of frigidity; but where, from actual malconformation, the infirmity can be ascertained at once, the triennial cohabitation is not required. (*h*) These latter suits are common to the man and the woman, but in the case of the former are designated by the same general appellation of impotency.

(*f*) *Pollard v. Wybourn*,  
Hagg. vol. 1, p. 728.

(*g*) *Ibid.* p. 725.

(*h*) *Briggs v. Morgan*, Phill.  
R. 3, p. 329.

This suit commences with the following citation :—

*Citation.*

Charles James by Divine permission, Bishop of London, to all and singular clerks and literate persons whomsoever and wheresoever in and throughout our whole diocese of London, greeting :—

Citation for  
impotence.

We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause to be cited A——— B———, of the parish of                      in the county of                     , Esquire, and our diocese of London, by shewing him this original citation under seal, and by leaving with him a true copy thereof, to appear personally, or by his proctor duly constituted, before the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after he shall have been served herewith, if it be a general session, bye-day, extra or additional court-day of our said court, otherwise on the general session, bye-day, extra or additional court-day of our said court then next ensuing, at the hour of the sitting of the court, and there to abide, if occasion require, during its continuance, then and there to answer to C——— D———, spinster, falsely called                     , and pretended to be the wife of the said A——— B———, in a certain cause of nullity of mar-



marriage were usually published, prior to and since the year 1754,) by the Reverend \_\_\_\_\_, Clerk, a Priest or Minister in Holy Orders of the United Church of England and Ireland, and the minister or chaplain of the said chapel, or then officiating as such, and according to the rites or ceremonies of the said United Church, in pursuance of a license granted for the purpose under the seal of the office of faculties of his Grace the Lord Archbishop of Canterbury, on the \_\_\_\_\_ day of \_\_\_\_\_ preceding, reciting as the fact was, that the consent of \_\_\_\_\_, the natural and lawful father of the said minor, had been obtained to the marriage, and an entry of such fact of marriage was duly made in the register-book of marriages kept in and for the said chapel; and this was and is true, public, and notorious.

That in part supply, &c.

Second.

That on the said first day of \_\_\_\_\_ 18 \_\_\_\_\_, the said A—— B——— attained his age of twenty-one years, and the said C—— D——— was at such time of the age of \_\_\_\_\_ and under the age of twenty-four years, and on the said day, and almost immediately after the solemnization of the said marriage, they, the said A—— B——— and C—— D——— went together to \_\_\_\_\_ in the county of \_\_\_\_\_, and remained at the \_\_\_\_\_ Inn there, until the following morning, and passed together the whole of the night of the said day of \_\_\_\_\_, naked and alone, in one and the same bed, at the said inn; and this was, &c.

Third.

That on the morning of the second day of the said month of \_\_\_\_\_ 18 \_\_\_\_\_, the said A—— B——— and C—— D——— left the said \_\_\_\_\_ Inn, at \_\_\_\_\_ and proceeded together to \_\_\_\_\_ in the county of \_\_\_\_\_

Fourth.

, where at the house of , situate on the , they in the latter part of the said day took up their residence and continued the same for a period of fourteen days, or thereabouts, and throughout each of the nights during the said period they lay naked and alone together in one and the same bed, in the said house ; and this, &c.

**Fifth.**

That, at the expiration of the said period of fourteen days, and about the middle of the said month of 18 , the said A—— B—— and C—— D—— took up their residence at , in the county of , in a house called Cottage, and there lived and cohabited together from that time namely, the middle of the month of , 18 , until the day of , 18 , (save at the short intervals hereinafter pleaded,) and on each night of their said residence at aforesaid, from the middle of the month of , 18 , until the said day of 18 they, the said A—— B—— and C—— D—— lay naked and alone together, in one and the same bed, in the said house ; and this, &c.

**Sixth.**

That on or about the said day of , 18 , the said A—— B—— and C—— D—— went to reside at a house in , in the county of , and lived and cohabited together at the said house, from the said day of until the day of following, (save at the intervals hereinafter pleaded,) and on each night of their said residence in aforesaid, (save those in the intervals, aforesaid,) from the said day of , 18 , to the said day of following, they, the said A—— B—— and C—— D—— lay naked and alone together, in one and the same bed, in the same house ; and this, &c.



That the intervals excepted in the fifth and sixth Seventh. articles of this libel, when the said A—— B—— and C—— D—— were away from the said houses respectively in                      and                      , in the county of                      , were at the times following, that is to say, in the month of                      , 18—; in                      , 18—; in                      , 18—; in                      , 18—; in                      and                      , 18—; and in                      18—; and such intervals in the month of                      , 18—, and in                      18—, consisted of a period of fourteen days each, and were passed by the said A—— B—— and C—— D—— at the house of                      , at                      , in the said county of                      ; the interval in the month of                      , 18—, consisted of twenty days and was passed by the said A—— B—— and C—— D—— at the house of                      , at                      in the county of                      ; the interval in the month of                      , 18—, consisted of ten days, or thereabouts, and was passed by the said A—— B—— and C—— D—— at the house of                      , at                      , in the county of                      ; the interval in the month of                      and                      , 18—, consisted of a month, or thereabouts, and was passed by the said A—— B—— and C—— D—— at the house of                      , at                      , in the the said county of                      , and                      , in the city of                      , and of                      , at                      , in the said county of                      ; the intervals in the months of                      and                      , 18—, consisted of thirty-six days, or thereabouts, and fourteen days of the same in the said month of                      , 18—, were passed by the said A—— B—— and C—— D——, at the house of the said                      , at                      , aforesaid, and ten days of the same at the house of                      ,

at \_\_\_\_\_, in the county of \_\_\_\_\_; and during the whole of the said several intervals, they, the said A—— B—— and C—— D—— lived and cohabited together as husband and wife, and on each of the nights of the said days, so passed at the said houses respectively, they the said A—— B—— and C—— D—— lay naked and alone together in one and the same bed; and this was, &c.

**Eighth.**

That during the whole of the aforesaid period that the said A—— B—— and C—— D—— so cohabited together, namely, from the time of the said marriage on the said first day of \_\_\_\_\_, 18\_\_\_\_, to the month of \_\_\_\_\_, 18\_\_\_\_, inclusive, they, the said A—— B—— and C—— D—— were respectively in good health, and she the said C—— D—— was also apt and fit for coition and the procreation of children, and was willing to receive and shewed herself desirous of receiving the conjugal embraces of the said A—— B——, and on all occasions gave herself up to him for the purpose; and this, &c.

**Ninth.**

That notwithstanding the premises pleaded in the next preceding articles, the said A—— B—— has not at any time been able to consummate the said marriage, and she the said C—— D—— never hath been carnally known by him, nor is he the said A—— B——, able carnally to know her the said C—— D——; and the party proponent doth expressly allege and propound that the inability of the said A—— B—— to consummate the said marriage and carnally know the the said C—— D——, arises from the defective state of the parts of generation of him the said A—— B——, and his natural impotency, imbecility, and impediment, which renders him incapable of consummating mar-

riage, or of carnally knowing or having sexual intercourse with any woman whomsoever; and this was, &c.

That prior to, and at the time of the said marriage Tenth.  
on the      day of      , 18      , and at all times subsequent thereto, the said A—— B—— was, as he now is, impotent and wholly incapable of performing the act of generation or of carnally knowing any woman, and such his constant impotency or imbecility and incapacity will clearly appear on an inspection of his person by physicians and surgeons or other competent persons sufficiently skilled to form an opinion respecting the same; and it will also appear by such inspection, that such the constant impotency, imbecility, and incapacity, on the part of the said A—— B——, cannot be removed or relieved; and this was, &c.

That the said C—— D—— hath not been carnally Eleventh.  
known by man, and now is a virgin, and such her virginity will appear on an inspection of her person by physicians and surgeons or other competent persons; and this, &c.

That until the month of      or      , 18      , the Twelfth.  
said C—— D—— did not divulge or disclose the fact of the non-consummation of the said marriage, and the same was unknown to her relations until that time. That, subsequently to such disclosure, the said A—— B—— hath admitted and confessed to divers credible persons, and more particularly, in the said month of      , 18      , to      , and to      and others, that he had not consummated the said marriage and carnally known the said C—— D——, and that he was at the time of his said marriage, and ever since has been, unable to effect such consummation, or to that effect; and this was, &c.

- Thirteenth.** That A—— B—— and C— D—— mentioned, as well in the first and second, as in the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and twelfth articles of this libel, and A—— B—— and C—— D——, the parties in this cause, were and are the same persons, and not divers, and this, &c.
- Fourteenth.** That the said A—— B—— was, long prior to and at the time of the commencement of this suit, and now is of the parish of , in the county of , diocese of , and province of and the said parish was and is within the jurisdiction of the commissary for the parts of , in the said diocese, and by reason of the letters of request from the said commissary, and the acceptance of the execution of the same, and other the premises, was and is subject to the jurisdiction of this court; and this was, &c.
- Fifteenth.** That of and concerning the premises it hath been and is, on the part and behalf of the said C— D——, rightly and duly complained unto you, the official principal aforesaid, and to this court; and this, &c.
- Sixteenth.** That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays that the marriage had, as before pleaded, between the said A—— B—— and C— D——, may, by reason of the premises, be declared null and void to all intents and purposes in the law whatsoever, and he the said A—— B——, condemned in costs, and that otherwise right and justice may be effectually administered in the premises, the party proponent not obliging himself to prove all and singular the premises, or to the burthen of a super-

fluuous proof, against which he protests, but prays that so far as he shall prove, he may receive on his petition, humbly imploring the aid of your office in this behalf.

*Libel.*

In the name of God, amen, &c.

Libel for im-  
potence.  
First.

That on or about the \_\_\_\_\_ of \_\_\_\_\_, 18 \_\_\_\_\_, a ceremony of marriage was performed (or rather profaned) between the said A—— B——, then a bachelor, and the said C—— D——, otherwise (to wit, since falsely called) \_\_\_\_\_, then (and still) a spinster, and who were second cousins, in the house and chapel of the British ambassador, in the city of \_\_\_\_\_ and kingdom of \_\_\_\_\_; that the said marriage ceremony was so performed by the Reverend

\_\_\_\_\_, Clerk, a Priest or Minister in Holy Orders of the Church of England, (Chaplain to the then British Embassy in \_\_\_\_\_,) and according to the rites and ceremonies of the Church of England as by law established; that an entry of such, as of a marriage between the said parties, was made in the Register Book of Marriages had and solemnized in the said British Ambassador's Chapel, in the terms following, to wit:—

“ A—— B——, bachelor of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, and C—— D——, spinster, of the parish of \_\_\_\_\_, in the same county, were married in this house by licence, with consent of \_\_\_\_\_, her father, this

day of \_\_\_\_\_, in the year one thousand eight hundred and \_\_\_\_\_, by me, \_\_\_\_\_.” “ This marriage was solemnized between us, A—— B——

C—— D—— in the presence of ,  
 .” And that a transcript of the said entry was afterwards made and transmitted to the registry of this court, where the same now remains, and to which the party proponent craves leave to refer; and the party proponent further alleges and propounds, that A—— B—— and C—— D——, who were so in fact married as herein pleaded, and whose names respectively are mentioned in the said entry and transcript, and A—— B—— and C—— D——, otherwise , the parties in this cause respectively, were and are one and the same persons respectively, and not divers; and this, &c.

Second.

That the names, A—— B——, appearing subscribed to the said entry of marriage pleaded in the said preceding article, are of the proper handwriting and subscription of A—— B——, one of the parties in this cause, and are so well known and believed to be by divers persons of good faith and credit, who are well acquainted with the said A—— B——, and with his manner and character of handwriting and subscription, from having frequently seen him write and subscribed his name to writings, and by other means; and this, &c.

Third.

That the names, C—— D——, appearing subscribed to the said entry of marriage pleaded in the said preceding article, are of the proper handwriting and subscription of C—— D——, spinster, falsely called , the other party in this cause, and are so well known and believed to be by divers persons of good faith and credit, who are well acquainted with the said C—— D——, and with her manner and character of

handwriting and subscription, from having frequently seen her write and subscribe her name to writings, and by other means ; and this, &c.

That at the time aforesaid of the celebration, or rather profanation of the aforesaid pretended marriage as aforesaid, the said A—— B—— was a major of the age of about        years, but that the said C—— D——, otherwise       , was a minor only just turned of        years of age ; and this, &c. Fourth.

That the said pretended marriage had and solemnized, or rather profaned as aforesaid, was never consummated, as will be hereinafter more particularly pleaded ; but that the said A—— B—— and the said C—— D——, otherwise       , nevertheless, from and after the time thereof, lived and cohabited together, except as to sexual intercourse, as husband and wife, in manner as and at the several places also hereinafter more particularly pleaded. That they also, ever since their said marriage, in fact save as hereinafter mentioned, have acknowledged each other as and for husband and wife respectively, and that they were and are commonly accounted, reputed, and taken as and for such respectively by and amongst their relations, friends, and acquaintances ; and this, &c. Fifth.

That on the night following the celebration, or rather profanation of the said pretended marriage, the said A—— B—— desired the said C—— D——, otherwise       , to sleep with Sixth.

                    , spinster, (who had accompanied them to       , as aforesaid,) as she had been theretofore accustomed to do ; and which the said C—— D——, otherwise       , did accordingly. That she also still, by the desire of the said A—— B——, conti-

nued generally to sleep as before with her said sister during the rest of their stay in , and until their return to this country, their journey to which, from , commenced about a week after the said pretended marriage had been there celebrated, or rather profaned, as aforesaid: that at , however, on their said journey, the said A—— B—— came one morning into the bed-room and bed of the said C—— D——, otherwise , (her said sister having on that night occupied a separate bed-room and bed,) and there lay with her for some time naked and alone, to wit in the said bed; and this, &c.

eventh That on their return to this country, at or about the time in the next preceding article pleaded, the said A—— B—— and the said C—— D——, otherwise , took up their residence at the , in Street, , where they continued to reside for about three months. That during such whole time, (with the exception of certain nights, on which the said A—— B—— slept out of the said hotel, though where in particular on such nights, is unknown to the party proponent, and to his party, the said C—— D——, otherwise ,) the said A—— B—— and the said C—— D——, otherwise , slept every night naked and alone in one and the same bed-room, in which were two beds however, and which beds, for the most, were occupied by the said A—— B—— and the said C—— D——, otherwise , separately. That the said parties, nevertheless, passed whole nights, or parts of whole nights, during such period, naked and alone in one and the same bed, to wit, that of the said C—— D—— otherwise , who never refused



or declined, but, on the contrary, rather at all times invited the said A—— B——'s access to her bed, as well during the period articulate as during the whole period of their cohabiting with each other hereinafter pleaded ; and this, &c.

That in the autumn of the said year 18 , the said Eighth. A—— B—— and the said C—— D——, otherwise , went on a visit to the , since deceased, of the said C—— D——, otherwise , at , near , where they continued for about six weeks, during which whole time they occupied one and the same bed-room, and during about the first half of which they lay every night naked and alone in one and the same bed. That from (after a short visit paid to an of the said C—— D——, otherwise , resident at in the county of , and where the said C—— D——, otherwise , by desire of the said A—— B——, slept with her the aforesaid , who had accompanied them there, the said parties returned to the Hotel aforesaid, and at which hotel, as during their former stay thereat, they again occupied a double-bedded room. That from the said Hotel the said A—— B—— and C—— D——, otherwise , went to lodgings in , and from such to other lodgings in , and from such last-mentioned lodgings to the Hotel, in Street, , respectively, where they continued to live and reside until the of the year 18 . That in the of 18 the said parties again went abroad, viz., *via* and , to , where they resided for about three months. That after

such time, to wit, in the \_\_\_\_\_ of 18 \_\_\_\_\_, they made several tours together in \_\_\_\_\_, still, however, from time to time, returning to and making \_\_\_\_\_ their principal place of residence, until the spring of 18 \_\_\_\_\_, when they went into \_\_\_\_\_ together. That during all such time the said A\_\_\_\_\_ B\_\_\_\_\_ absented himself from the bed, and mostly from the bed-room, of the said C\_\_\_\_\_ D\_\_\_\_\_, otherwise \_\_\_\_\_, and constantly slept in a separate bed, and mostly in a separate bed-room, from that of the said C\_\_\_\_\_ D\_\_\_\_\_, otherwise \_\_\_\_\_, during all such time; and this, &c.

Ninth.

That the said parties, after staying for some time first in \_\_\_\_\_ as aforesaid, and afterwards at \_\_\_\_\_ and \_\_\_\_\_ respectively, returned together to this country, to wit, in or about the month of \_\_\_\_\_, 18 \_\_\_\_\_, and again took up their residence at the \_\_\_\_\_ Hotel, in \_\_\_\_\_ Street, \_\_\_\_\_, aforesaid. That from the said hotel to wit, in or about the month of \_\_\_\_\_, 18 \_\_\_\_\_, the said C\_\_\_\_\_ D\_\_\_\_\_ otherwise \_\_\_\_\_, went on visits successively to her father, the aforesaid \_\_\_\_\_, at \_\_\_\_\_, in the county of \_\_\_\_\_; to her aforesaid grandaunt, at \_\_\_\_\_, near \_\_\_\_\_ aforesaid; and to \_\_\_\_\_, the brother of the said A\_\_\_\_\_ B\_\_\_\_\_, at \_\_\_\_\_ also in \_\_\_\_\_; and that during the stay at such last-mentioned place, where, on her arrival, she was met by the said A\_\_\_\_\_ B\_\_\_\_\_, and which lasted for about six weeks\_\_\_\_\_, said A\_\_\_\_\_ B\_\_\_\_\_ slept every night naked and alone in one and the same bed with the said C\_\_\_\_\_ D\_\_\_\_\_, otherwise \_\_\_\_\_. That the said A\_\_\_\_\_ B\_\_\_\_\_ and the said C\_\_\_\_\_ D\_\_\_\_\_ otherwise \_\_\_\_\_ returned together in the month of \_\_\_\_\_

, in the said year 18—, to the said Hotel; and this, &c.

That the said A—— B—— and the Tenth. said C—— D——, otherwise , went together from the said Hotel to lodgings in Street, and afterwards, to wit, in or about the month of , 18—, to other lodgings in Street, where they continued for about a year and a quarter. That during the whole of such their residence at the said Hotel, and at each of their said lodgings successively, the said A—— B—— wholly absented himself from the bed of the said C—— D——, otherwise , and that he, the said A—— B——, slept but one night in the said house even in Street (and then only in consequence of having been detained there by the extreme severity of the weather) during the whole time aforesaid, that they occupied lodgings therein, though where he slept, out of such house at such time, is unknown to the party proponent and to his party, the said C—— D——, otherwise . That the aforesaid , spinster, was principally resident with the said C—— D——, otherwise , during that period; and that on the one night on which the said A—— B—— slept in the house, during that period as aforesaid, he slept there in the bed usually occupied by the said , spinster, who resigned it for his accommodation, and slept with her sister, the said C—— D—— otherwise , on that night; and this, &c.

That in or about the month of , 18 , the Eleventh. said A—— B——, and the said C—— D——, otherwise , left Street, afore-

said, and went to \_\_\_\_\_, accompanied by the said \_\_\_\_\_, where, at the end of about six weeks, the said \_\_\_\_\_ (who in the meantime had constantly slept with her said \_\_\_\_\_, the said C—— D——, otherwise \_\_\_\_\_, the said A—— B—— occupying a separate bed-room,) caught a fever, of which disease she the said \_\_\_\_\_ soon after died there. That the said A—— B—— and the said C—— D——, otherwise \_\_\_\_\_, returned to \_\_\_\_\_ upon that event, and from such time lived together successively at the afore-said \_\_\_\_\_ Hotel, \_\_\_\_\_; at \_\_\_\_\_, in the county of \_\_\_\_\_; and at lodgings in \_\_\_\_\_ Street, \_\_\_\_\_; and then again at the said \_\_\_\_\_ Hotel, until the month of \_\_\_\_\_, 18—; but that during no part of such time did or would the said A—— B—— lie in the same bed, or save only occasionally, (such occasions being rare,) occupy the same bed-room with the said C—— D——, otherwise \_\_\_\_\_; and this, &c.

Twelfth.

That in the month of \_\_\_\_\_ 18—, the said A—— B—— and the said C—— D——, otherwise \_\_\_\_\_, went to \_\_\_\_\_ together, and took up their residence there at the \_\_\_\_\_ Hotel, where, however, they had still separate bed-rooms, though the said A—— B—— used to visit the said C—— D——, otherwise \_\_\_\_\_, in her said separate bed-room every morning, and, from his regular habit of so doing, passed at the said hotel, or was taken for, her medical attendant. That from the said hotel the said parties went into lodgings, and afterwards, successively, into two cottages, all situate in or near the said town of \_\_\_\_\_, in all of which, however, as well as in the

other places aforesaid, the said A—— B—— still absented himself from the bed of the said C—— D——, otherwise ; and that whilst resident at the last of such cottages, to wit, in or about the month of , 18 , the said A—— B—— left altogether, and finally ceased to cohabit in any sort with the said C—— D——, otherwise who hath since that time seen him, the said A—— B——, but on two occasions only, and both times in the presence of a third person ; and this, &c.

That during all and singular the nights and parts of Thirteenth. nights that the said A—— B—— and the said C—— D——, otherwise lay, naked and alone, in one and the same bed-room and bed, as pleaded in the sixth, seventh, eighth, ninth, and eleventh articles of this libel, the said C—— D—— otherwise , was apt and fit for coition, and was desirous of the conjugal embraces of him, the said A—— B——, and willing to be carnally known, in order to become a mother, by him, and gave herself up to him, without any reserve, for that purpose accordingly ; also that during the whole thereof, save as hereinafter excepted, the said A—— B—— was of sound and perfect bodily health, but that, notwithstanding the premises, he the said A—— B——, neither ever did nor was ever able to consummate his aforesaid pretended marriage with the said C—— D——, otherwise , who is still a virgin, and has never been carnally known by man, as will appear on due inspection of her person (if necessary,) to competent judges (physicians and surgeons or others) ; and this, &c.

Fourteenth.

That the said A—— B——'s parts of generation and sexual or seminal organs were and are not such, or in the same state, as are the same parts and organs in men capable of having connexion with and of the carnal knowledge of woman; and the party proponent expressly alleges and propounds, that it will appear to competent judges, (physicians and surgeons or others,) on a due examination of his the said A—— B——'s person, that such was and is the fact, and that he, the said A—— B——, as well at the time of his aforesaid pretended marriage with the said C—— D——, otherwise , as before and ever since the same, hath been and now is naturally impotent or incapable of knowing any woman carnally; and that it will also further appear to such competent judges, on such due examination, that the said A—— B——'s natural impotency aforesaid was and is irremediable, and not to be removed or relieved by art; and this, &c.

Fifteenth.

That on the occasion of an interview, which the said A—— B—— had with the said C—— D—— otherwise , at the aforesaid Hotel, in the month of last, to wit, of in the present year, 18 , he, the said A—— B——, admitted to the said C—— D——, otherwise (in the presence and hearing of a third person present during and throughout their said interview,) that their said pretended marriage was a nullity, and that he knew it to be in her power to procure a legal sentence declaring it so to be, as he had taken several opinions on the subject, which went to that effect. That it was a delicate business (he added) for her to move in, but that she, as the injured party, must be

the plaintiff in any suit to obtain such a sentence; and that, knowing as he did the sufferer which she had been in consequence of their said marriage, he could not blame her for being the plaintiff in any suit which afforded her the means of releasing herself from it; or he, the said A——— B———, on the said occasion, expressed himself to the very effect, or in words of the identical meaning and import articulate; and this, &c.

That the said C—— D——, otherwise , Sixteenth. until recently, concealed from her legal and other advisers, as well the fact of the non-consummation, of her aforesaid pretended marriage with the said A——— B———, as the cause thereof, and the other, or most of the other facts and circumstances connected therewith, and inferring or tending to evidence the same, hereinbefore pleaded, and that her motive to such concealment, was female delicacy, coupled with her ignorance, until recently, of there being facts which, upon proof, would entitle her to a sentence pronouncing and declaring her said pretended marriage with the said A——— B——— null and void in law. That on such better information, recently obtained as aforesaid, she, the said C—— D——, otherwise disclosed the said facts to her said legal and other advisers, and that the result of such disclosure has been the institution of this suit on her behalf; and this, &c. &c. &c.

The libel having been brought in and admitted, and the issue and personal answers of the defendant given in the negative, the promoter applies to the court to assign the former to undergo an inspection of his

person. Three medical practitioners, viz., two physicians and a surgeon, or two surgeons and a physician, are then, on the recommendation of the promoter, and with the consent of the defendant, (who is at liberty, if he chooses, to name one or more himself,) are appointed or selected by the court, "to inspect the person of the party and to examine particularly the state and condition of his parts of generation, and to report whether he is capable of performing the act of generation, and, if he be incapable of so doing, whether such his impotency can be remedied so as to enable him to perform the act of generation."

If the party does not, through his proctor, declare his readiness to undergo such inspection, his compliance is enforced by the following monition:—

### *Monition.*

Monition for  
inspection.

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the whole province of Canterbury, greeting:

Whereas we, rightly and duly proceeding in a certain cause of nullity of marriage, by reason of impotency, which is now depending before us in judgment, by virtue of letters of request, under the hand and seal of the Worshipful and Reverend \_\_\_\_\_, Clerk, Doctor in Divinity, Official Principal of the Consistorial and Episcopal Court of \_\_\_\_\_, between M. F. V., spinster, falsely called S., and pretended to be the wife of J. S., Esquire, the party promoting the said



cause, on the one part, and the said J. S. of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, and diocese of \_\_\_\_\_, the party against whom the said cause is promoted, on the other part, have, at the petition of the proctor of the said M. F. V., spinster, falsely called S., decreed the said J. S. to be monished and called to appear in judgment on the day, at the time and place, and to the effect hereinafter mentioned; (justice so requiring :) we do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish and cite, or cause to be monished and cited, the said J. S. to appear personally before us, our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on Tuesday, the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, at the hour of ten in the forenoon of the same day, and there to abide, if occasion require, during the sitting of the said court, then and there to submit to an inspection of his parts of generation, to be made secretly by persons to be appointed by us, or our surrogate, or some other competent judge in this behalf for that purpose, and further to do, &c.

At the same stage of the proceedings, the proctor of the promoter or wife will take similar steps to obtain an authorized inspection of her person by inspectors appointed by the court.

Previously to the inspection, the medical men selected for the purpose are produced before a surrogate of the court, in order to be sworn. The oath which is administered to them on the occasion of their examination of the female, is to the effect "that they will faithfully, and according to the best of their skill, inspect the

parts of generation of A. B., and make a just and true report to the judge whether she is or is not a virgin, and hath or hath not any impediment on her part to prevent the consummation of marriage.”

The oath administered to the inspectors, prior to the examination of the man, is to the effect following, viz., “that they will faithfully, and according to the best of their skill, inspect the parts of generation of C. D., and make a just and true report to the judge whether he is capable of performing the act of generation, and, if he be incapable of so doing, whether such his impotency can be remedied so as to enable him to perform the act of generation.”

Such inspections will take place at the house of the party or of one of the inspectors. The report, when completed and drawn up by the latter, is delivered, sealed up, into the custody of the registrar, to be opened when publication shall have passed.

The following forms will illustrate each report:—

### *Report.*

Report of  
inspectors.

We, the undersigned, having been sworn faithfully, and according to the best of our skill and ability, to inspect the parts of generation of A—— B——, the party in a cause depending in the Court of  
, intituled “

,” and to make a just and true report to the judge of the said court, or his surrogate, whether he the said A—— B—— hath, or hath not, some natural and constant impotency, imbecility, or impediment, on his part, and whether he is not naturally frigid and impotent and wholly incapable of knowing a woman carnally, and by reason thereof was always, and at this present time is,

wholly incapable of performing conjugal rights, or of consummating the marriage solemnized between him the said A—— B——, and C—— D—— the other party in this cause, and whether such his natural and constant frigidity or impotency can or cannot be relieved or removed by the art or help of any physician or surgeon, do report that we have faithfully, and according to the best of our skill and ability, inspected the person of the said A—— B—— who acknowledges himself to be the party in the said cause, and we believe that he is naturally frigid and impotent, and utterly incapable of fulfilling conjugal rites.

*Report.*

We the undersigned having been sworn faithfully and according to the best of our skill and ability, to inspect the parts of generation of C—— D——, otherwise , one of the parties in a cause depending in the Court of , entitled “ ,” and to make a just and true report to the judge of the said court, or his surrogate, whether she, the said C—— D——, otherwise , is or is not a virgin, and hath or hath not any impediment on her part to prevent the consummation of the marriage solemnized between her and A—— B——, the other party in the said cause, do report that we have faithfully, and according to the best of our skill and ability, inspected the parts of generation of the said C—— D——, otherwise (who acknowledges herself to us to be the party in the said cause, and has been produced to us as such by her proctor on our being

Report of  
inspectors.

sworn; and we find that the parts of generation of the said C—— D——, are regularly formed in all respects that there is no impediment on her part to the consummation of marriage with A—— B——, or any other person, that the part called the hymen exists in her person in an entire state, and we conclude from the latter circumstance, as well as from the general condition of the vagina at its entrance, that the said C—— D—— is a virgin.

This suit does not present any further peculiarity.

If the evidence in support of the impotency is sufficiently stringent, the court will pronounce “that the marriage in question was had between the parties, whilst one of them was naturally impotent, and incapable of consummating the same, and that such party so continues to be, and therefore the said marriage was and is absolutely null and void from the beginning; that the other party was and is free from all bond of marriage with the former, and at full liberty to contract and solemnize marriage with any other person.”

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## NULLITY OF MARRIAGE BY REASON OF A FORMER MARRIAGE.

It is almost unnecessary to say that a second marriage contracted during the lifetime of the parties, by either of them, is null and void *ab initio*. Notwithstanding the obvious fact of its nullity, it is occasionally necessary to obtain a declaratory sentence from the ecclesiastical judge (a).

The following forms will illustrate the citation, libel, and sentence in a suit of this kind, which in other respects present no peculiarity.

### *Citation.*

Charles James, by Divine permission, Bishop of London to all and singular clerks, and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting:—

Citation for nullity of marriage by reason of former marriage.

We do hereby authorize, empower, and strictly command you, jointly and severally, peremptorily to cite, or cause to be cited, Sarah Dumbleton, (wife of Samuel Thomas Dumbleton,) of the parish of Saint Marylebone, in the county of Middlesex, and our diocese of London aforesaid, falsely calling herself Sarah Legge, and pretending to be the wife of Henry Legge, to appear personally, or by her proctor duly constituted, before the Right Honourable Stephen Lushing-

(a) Searle v. Price, Hagg. Morpew, Phill. R. vol. 2, C. R. vol. 2, p. 187. Bayard v. p. 321.

ton, Doctor of Laws, our Vicar-General, and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, or place of judicature there, on the third day after she shall have been served with these presents, if it be a general session-day, bye-day, extra or additional court-day, of our said court, otherwise on the general session bye-day, extra, or additional court-day of our said court then next ensuing, at the hour of the sitting of the court, and there to abide, if occasion require, during its continuance, then and there to answer to the said Henry Legge of the parish of Saint Luke, Old Street, in the county of Middlesex, in a certain cause of nullity of marriage by reason of the former marriage of her, the said Sarah Dumbleton; and further to do, &c.

### *Libel.*

Libel of nullity of marriage by reason of former marriage.  
First.

In the name of God, amen, &c.

That in or about the month of October, 1820, the said Samuel Thomas Dumbleton, being then a bachelor and the said Sarah Dumbleton, (falsely calling herself Legge and pretending to be the wife of the said Henry Legge,) being at such time Sarah Harrison, and a widow, were lawfully joined together in holy matrimony according to the rites and ceremonies of the Church of England, as by law established, in the parish church of Saint James, Westminster, in the county of Middlesex, by the Reverend Peter Felix, Clerk, a Priest or Minister in Holy Orders of the Church of England, or offi-

ciating as such, in the presence and hearing of divers credible witnesses, and that an entry of such marriage was duly made in the register-book of marriages kept in and for the said parish of Saint James, Westminster, for the said year, 1820; and this, &c.

That in part supply of proof of the premises in the next preceding article pleaded, and to all other intents and purposes in the law, the party proponent exhibits, hereto annexes, and prays to be here read and inserted, and taken as part and parcel hereof, a certain paper, partly written and partly printed, marked A., and alleges and propounds the same to be and contain a true copy of the original entry of the marriage of the said Samuel Thomas Dumbleton and Sarah Dumbleton, formerly Harrison, widow, in the preceding article mentioned. That the same hath been faithfully extracted from the register-book of marriages kept in and for the said parish of Saint James, Westminster, for the said year 1820, and carefully collated with the original entry, now remaining therein, and found to agree therewith. That all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein contained, and that Sarah Harrison therein-mentioned as married to the said Samuel Thomas Dumbleton, and Sarah Dumbleton, wife of the said Samuel Thomas Dumbleton, falsely calling herself Legge, and pretending to be the wife of Henry Legge, the other party in this cause, was and is one and the same person and not divers; and this, &c.

Second.

That the said Samuel Thomas Dumbleton and his wife, the said Sarah Dumbleton, from and after the said marriage, (which they duly consummated,) lived and cohabited together as lawful husband and wife, first in

Third.

London for a short time, then at or in the neighbourhood of Edgware, in the county of Middlesex, for the period of about six months, at the expiration of which latter time, by consent or otherwise, they separated from each other, and from which time they have never lived and cohabited together to the knowledge of the party proponent, or of his party, the said Henry Legge; and this, &c.

Fourth.

That the said Samuel Thomas Dumbleton, who was naturally a person of unsteady conduct, and loose and dissipated habits, spent his boyhood at Badby in the county of Northampton, whither his mother had removed from Newnham, in that county, on the death of his father, who died when he was very young. That from Badby, he removed with his sister Lucy and her husband, William Chillingworth, to Edgware in the county of Middlesex, where the same William Chillingworth taught him his own business, to wit, that of a plasterer, and that he worked as such at Edgware, and in the neighbourhood, until shortly before the marriage aforesaid between him the said Samuel Thomas Dumbleton and the said Sarah Dumbleton, and with whom he also for some time cohabited there, as hereinbefore pleaded; and this, &c.

Fifth.

That the said Samuel Thomas Dumbleton, for some time after his said separation from his said wife, mentioned in the third article of this libel, worked at his trade as a plasterer some time with his brother-in-law, the aforesaid William Chillingworth, at Edgware, and in its neighbourhood, but that since he disappeared therefrom, to wit, in or about the year 1834, the particulars of his history, save as hereinafter pleaded, are unknown to the party proponent, and to his party. But the party proponent expressly alleges and pro-



pounds, that the said Samuel Thomas Dumbleton was living on the 7th day of February, 1833, hereinafter-mentioned, and long subsequent thereto, as is hereinafter more particularly pleaded; and this, &c.

That on the first Thursday, in September, 1835, Sixth.  
(being Steventon Feast,) the said Samuel Thomas Dumbleton, called and dined at the King's Head Inn, in Daventry, in the county of Northampton, and there, upon such occasion, he contracted a debt, or ran up a bill, (still unpaid,) the persons at the inn giving him credit on his representing himself as a traveller for some spirit merchants, and on the faith of which representation, at his instance, they gave him an order on his pretended employers, for two gallons of brandy, and also from finding, as the fact was, that he was well known to a person there at the inn, who was himself a person known and of good credit there; for the party proponent expressly alleges and propounds that so being at the said King's Head Inn, at Daventry, .. that day, the said Samuel Thomas Dumbleton then and there .. or encountered a person from Newn-  
.. aforesaid, under whose roof he himself as a boy had resided for a year and a half, with his mother and two sisters, previous to their removal from such place, to Badby aforesaid, and who otherwise well knew him. That the said Samuel Thomas Dumbleton and the said person mutually recognizing each other on the said occasion, the said person, at his solicitation, dined at the said King's Head Inn, with the said Samuel Thomas Dumbleton on that day, and that the said Samuel Thomas Dumbleton then, as the fact was, told the said person, as they conversed on family affairs, what he before knew, though by report only, namely

that the said Samuel Thomas Dumbleton had married a widow some years before, but was not then living or cohabiting with his wife; and this, &c.

Seventh.

That in or about the same month of September, 1835, the said Samuel Thomas Dumbleton called at the house of a relation at Badby aforesaid, who had been his schoolfellow there, and who well knew both him and his family. That on the said occasion, whilst partaking of some refreshment, the said Samuel Thomas Dumbleton, after talking over old times and comparing school recollections with his said schoolfellow, told him, amongst other things, that he had been married, but was living apart from his wife, with whom, he said, that he had had some property, but to whom he attributed certain infirmities of temper, and whom he otherwise spoke of in terms of disparagement; and this, &c.

Eighth.

That the said Samuel Thomas Dumbleton was also

alluded to in the said

libel, in the year 1833, long subsequent

17th day of January in that year, and in the

1835, and 1836, all, some, or one of them, but since which time he hath not been seen or conversed with by any person or persons at present known to the party proponent or his party aforesaid; and this, &c.

Ninth.

That the said Sarah Dumbleton, soon after her separation from her husband, pleaded in the third article of this libel, went into service as housekeeper in a large establishment, where she continued until in, or about the year 1825, and then went to live with the said Henry Legge (party in this cause) in the same capacity, and continued to do so until her pretended marriage

with him, the said Henry Legge, hereinafter pleaded; and this, &c.

That notwithstanding the premises hereinbefore Tenth. pleaded, the said Sarah Dumbleton, in the month of January, 1833, accepted the courtship and addresses in the way of marriage of the said Henry Legge, representing herself as then being, and passing as and for a widow, and that accordingly, to wit, on or about the 17th day of the said month of January, the said Henry Legge and Sarah Dumbleton (so passing and representing herself as aforesaid,) were in fact, but unlawfully, joined together in holy matrimony, according to the rites and ceremonies of the Church of England, as by law established, in the parish church of Saint Mary-lebone, in the county of Middlesex, by the Reverend John Moore, Clerk, a Priest or Minister in Holy Orders of the Church of England, or officiating as such, in the presence of divers credible witnesses, and that an entry of such marriage in fact so had, or rather profaned, was duly made in the register-book of marriages, kept in and for the said parish for the said year. And the party proponent expressly alleges and propounds that, by reason of the premises, the said marriage in fact so had, or rather profaned between the said parties, was and is to all intents and purposes null and void in law; and this, &c.

That in part supply of proof of the premises pleaded Eleventh. and set forth in the next preceding article of this libel, and to all other intents and purposes in the law, the party proponent exhibits, hereto annexes, and prays to be here read and inserted and taken as part and parcel hereof, a certain paper writing, partly printed and partly written, marked B, and alleges and propounds the same

to be and contain a true copy of the entry of the fact of marriage between the said Henry Legge and Sarah Dumbleton, in the preceding article pleaded. That the same hath been faithfully extracted from the register-book of marriages kept in and for the said parish of Saint Marylebone, in the county of Middlesex, for the said year 1833, and carefully collated with the original entry now remaining therein and found to agree therewith. That all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein contained, and that Henry Legge and Sarah Dumbleton therein mentioned, and Henry Legge and Sarah Dumbleton (wife of Samuel Thomas Dumbleton, formerly Harrison,) the parties in this cause, were and are the same persons respectively, and not divers ; and this, &c.

Twelfth.

That (*residence.*)

Thirteenth.

That (*jurisdiction.*)

Fourteenth.

That all and singular, &c., the party proponent prays that the pretended marriage so had, as before pleaded, between the said Henry Legge and Sarah Dumbleton may, by reason of the premises, be pronounced null and void, to all intents and purposes in the law whatsoever, and that otherwise right and justice, &c.

### *Sentence of Nullity.*

Sentence of nullity of marriage by reason of former marriage.

In the name of God, amen. We Stephen Lushington, Doctor of Laws, Vicar-General of the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, lawfully constituted, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed the

merits and circumstances of certain cause of nullity of marriage, by reason of a former marriage, now depending before us in judgment in this court, promoted and brought by Henry Legge against Sarah Dumbleton, of the parish of Saint Marylebone, in the county of Middlesex and diocese of London, the wife of Samuel Thomas Dumbleton, but falsely calling herself Legge and pretending to be the wife of the said Henry Legge; and the parties aforesaid lawfully appearing before us in judgment by their proctors, and the proctor for the said Henry Legge praying sentence to be given for, and justice to be done to his party, and the proctor for the said Sarah Dumbleton praying justice; and we having carefully and diligently searched into and considered the whole proceedings had and done before us in the said cause, and having observed all and singular the matters and things that by law in this behalf ought to be observed, have thought fit, and do thus think fit, to proceed to the giving our definitive sentence or final decree in the said cause, in manner following, to wit: forasmuch as we have by the acts enacted, deduced, alleged, exhibited, pleaded, propounded, and proved in the said cause, found and clearly discovered that the proctor of the said Henry Legge hath sufficiently founded and proved the intention deduced in a certain libel, with exhibits annexed, given, and admitted in the said cause, on the part and behalf of the said Henry Legge, and now remaining in the registry of the said court, (which said libel and exhibits we take, and will to have taken, as if here read and inserted,) for us to pronounce, as hereinafter is pronounced, and that nothing at least effectual in law hath, on the part and behalf of the said Sarah Dumbleton, been excepted, deduced, alleged, exhibited,

propounded, or proved in the said cause, to defeat such intention. Therefore we, Stephen Lushington, Doctor of Laws, the Vicar-General and Official Principal aforesaid, having heard counsel in this behalf, on the part of the said Henry Legge, and also on the part of the said Sarah Dumbleton respectively, do pronounce, decree, and declare that the said Sarah Dumbleton, being then Sarah Harrison, widow, and free from all matrimonial contracts or engagements, did, at the time and place libellate, contract true, pure, and lawful marriage with the aforesaid Samuel Thomas Dumbleton, then a bachelor, and also free from all matrimonial contracts and engagements, and did solemnize such marriage in the face of the church, and afterwards consummated the same by carnal copulation, and that they the said Samuel Thomas Dumbleton and Sarah Dumbleton were and are lawful husband and wife, and for and as such were and are commonly accounted, reputed, and taken; and we do pronounce, decree, and declare for the force and validity of the marriage so had and solemnized between them the said Samuel Thomas Dumbleton and Sarah Dumbleton, to all intents and purposes in the law whatsoever, and we do also pronounce, decree, and declare, according to the lawful proofs made in the said cause as aforesaid, that the said Sarah Dumbleton, after the solemnization and consummation of her said marriage with the said Samuel Thomas Dumbleton, being altogether unmindful of her conjugal vow, and not having the fear of God before her eyes, but being instigated and seduced by the devil, did, at the time and place libellate, and under the false suggestion that she was then a widow and free from all matrimonial contracts and engagements, contract a

pretended marriage with the aforesaid Henry Legge, but at the time of the solemnization, or rather profanation, of the said marriage between her the said Sarah Dumbleton and the said Henry Legge, the aforesaid Samuel Thomas Dumbleton was living. Wherefore, and by reason of the premises, we do pronounce, decree, and declare that such marriage, or rather shew or effigy of marriage, so had and solemnized, or rather profaned between the said Henry Legge and Sarah Dumbleton, was and is null and void from the beginning to all interests and purposes in the law whatsoever, and by reason thereof that the said Henry Legge was and is free from all bond of marriage with her the said Sarah Dumbleton by this our definitive sentence or final decree, which we give and promulge by these presents.

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## NULLITY OF MARRIAGE BY REASON OF INSANITY OR IMBECILITY.

Unsoundness of mind, whether in the form of lunacy or imbecility and weakness, if it existed at the period of the fact of marriage, vitiates its legality, and if the party has not been found by a commission of lunacy to have been in that state, prior thereto, the Ecclesiastical Court will inquire into the matter and determine the legal *status* of the parties (a).

(a) *Turner v. Meyers*, Hagg C. R. vol. 1, p. 417. *Portsmouth v. Portsmouth*, Hagg R. vol. 1, p. 356. 15 Geo. 2, c. 30.

The suits are instituted by the committee or by the next friend of the lunatic. The latter case can only occur in the event of the party's minority.

It is also competent to the party, if he or she has recovered his or her senses since the event, to institute the proceedings in his or her own name (*b*).

The following forms will illustrate the citation, libel, and sentence in this suit :—

### *Citation.*

Citation for nullity of marriage by reason of imbecility.

Charles James, by Divine permission Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever in and throughout our whole diocese of London, greeting :

We hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, Watts Wilkinson, of the parish of Saint Mary, Islington, in the county of Middlesex, and our diocese of London aforesaid, falsely calling himself and pretending to be the lawful husband of Hannah Keningale Wilkinson, spinster, a person of weak and imbecile or unsound mind, as hereinafter mentioned, to appear personally, or by his proctor duly constituted, before the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place

(*b*) Turner v. Meyers, *ut ante*.



of judicature there, on the third day after he shall have been served with these presents, if it be a general session, bye-day, or additional court-day of our said court, otherwise on the general session, bye-day, or additional court-day of our said court, then next ensuing, at the hour of the sitting of the court, and there to abide, if occasion require, during its continuance, then and there to answer to the said Hannah Keningale Wilkinson, spinster, a person of weak and imbecile or unsound mind, acting by the Reverend Henry Watts Wilkinson, of Sudbury, in the county of Suffolk, Clerk, the natural and lawful father, and one of the guardians of the person of her the said Hannah Keningale Wilkinson, lawfully appointed by the High Court of Chancery of Great Britain, in a certain cause of nullity of marriage, by reason of her, the said Hannah Keningale Wilkinson, having been at the time of her pretended marriage with the said Watts Wilkinson a person of weak and imbecile or unsound mind, and incapable of forming such a contract, and also by reason of the fraud and circumvention then practised on her, the said Hannah Keningale Wilkinson, by the said Watts Wilkinson and others upon the occasion of the said pretended marriage ; and further to do, &c.

*Libel.*

In the name of God, amen, &c.

That the same Hannah Keningale Wilkinson, spinster, falsely alleged to be the wife of Watts Wilkinson, the party in this cause, (acting by the said Reverend Henry Watts Wilkinson, Clerk, her father, and one of the guardians of her person, lawfully appointed,) was and is the lawful grand-daughter of Hannah Keningale,

Libel of nullity of marriage by reason of imbecility.

First.

late of Great Horkesley, in the county of Essex, widow, deceased, and that upon her obtaining the age of twenty-one years, (which she did in the month of May, 1837,) she became entitled to a fortune, consisting partly of real estate and partly of money in the funds, together amounting in value to the sum of about £4,500, under the will of the said Hannah Keningale; and this, &c.

Second.

That the said Hannah Keningale Wilkinson is a person of mental weakness or imbecility, approaching to if not actually constituting unsoundness of mind, and that such her mental weakness or imbecility was and is constant and incurable; that from her earliest years the utmost attention was paid to her education, but that she never either did or could profit by the same to the extent of qualifying her to take a suitable part even in any the most ordinary concerns of life. That when or after she had become a woman in point of years, her whole conduct and demeanour, and even her appearance, continued to be those of a child; that she could answer simple questions correctly, if not hurried or alarmed, but was quite incapable of anything like conversation, unless upon the most childish topics; that she was taught just to read and write, by means of great pains bestowed upon her, but never could be taught to acquire, so as to retain, the commonest rules of arithmetic; that she never could be trusted with money, unless in very small sums, as she was incapable of understanding, and never could be taught to understand, either its use or its value; and that in such and all other respects it was manifest, on her attaining her majority, that she, the said Hannah Keningale Wilkinson, was still unequal to the conduct and management of herself and her affairs, and that there was every prospect, even at that time,

of her permanent continuance in that state ; and this, &c.

That up to the year 1837, when she attained the age of twenty-one years, the said Hannah Keningale Wilkinson, (save when at school, and save that quite in early life she had resided for some time with her grandmother, the aforesaid Hannah Keningale,) had lived with her father, the said Reverend Henry Watts Wilkinson, at Sudbury aforesaid, and the party proponent expressly alleges and propounds that in the month of July, 1837, the said Reverend Henry Watts Wilkinson, in consequence of such her incapacity aforesaid, and its probable continuance, caused a commission, in the nature of a writ *de lunatico inquirendo*, to issue out of the High Court of Chancery as for the purpose of inquiring into the state of mind of the said Hannah Keningale Wilkinson, but with the ultimate view of placing her person and property under the protection of that court. That the said Reverend Henry Watts Wilkinson, however, declined the further prosecution of the said commission, in consequence of an opposition which was raised thereto, (and which opposition was got up at Sudbury by a person claiming to interfere as the next friend of the said Hannah Keningale Wilkinson,) but that both parties concurring in the expediency of extending the protection of the Court of Chancery to the person and property of the said Hannah Keningale Wilkinson by some means, owing to her mental weakness or imbecility, a petition to that effect was presented to and heard by the then Lord Chancellor, on the 15th day of January, 1838, when his Lordship was pleased to direct that an

Third.

order for the purpose should be taken as nearly as might be, as in the case of an infant, and to refer it to the Master to report as to guardians, with the usual inquiries, such as what would be proper to be allowed for the maintenance and support of the said Hannah Keningale Wilkinson, and out of what fund such allowance should be paid, and the like. That a reference was accordingly had to the Master, who duly made his report, and which report was confirmed by an order dated the 1st day of August, 1838; that by this order, confirming the report of the Master, the High Court of Chancery appointed Thomas Fenn Addison, William Bestoe Smith, the said Reverend Henry Watts Wilkinson, (the father of the said Hannah Keningale Wilkinson,) and the Reverend Joseph Fenn, Clerk, and the survivors and survivor of them, guardians and guardian of the person of the said Hannah Keningale Wilkinson, and directed that the sum of £140 per annum should be allowed for her suitable maintenance and support; and this, &c.

Fourth.

That in part supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, the party proponent exhibits, hereto annexes, and prays to be here read and inserted, and taken as part and parcel hereof, a certain paper writing or exhibit, marked No. 1, and alleges and propounds the same to be and contain an official copy of the said order or decree confirming the Master's report, and dated the first day of August, 1838, in the next preceding article mentioned; that the same hath been faithfully extracted from the records of the High Court of Chancery of Great Britain; that all and singular the contents of the said

exhibits were and are true ; that all things were so had and done as therein contained, and that Hannah Keningale Wilkinson therein-mentioned, and the aforesaid Hannah Keningale Wilkinson, (falsely alleged to be the wife of Watts Wilkinson,) the party in this cause, acting by the said Reverend Henry Watts Wilkinson her father, and one of her guardians as aforesaid, was and is one and the same person and not divers ; and this, &c.

That pending the aforesaid proceedings in the High Fifth. Court of Chancery, to wit, some time in the year 1837, the said Hannah Keningale Wilkinson, spinster, was placed under the care of Mary Revell and Sarah Revell, spinsters, living at Sudbury, old and intimate friends of her family, with whom she has resided ever since, with the approbation of the High Court of Chancery, and the guardians of her person appointed by that court, as aforesaid ; and the party proponent expressly alleges and propounds that notwithstanding the constant and unwearied endeavours of the said Mary Revell and Sarah Revell to cultivate and improve her mind and understanding in that interval, she the said Hannah Keningale Wilkinson hath all along remained and still is in the same state of mental weakness or imbecility, under which she was labouring at the time, when after mature deliberation and consideration of all the circumstances of the case, she was made a ward of Chancery as aforesaid, and that as she has increased in years it has become still more evident that her childishness and mental imbecility were and are incapable of any effectual improvement. That although she is now in the twenty-ninth year of her age, her physical and mental development, particularly the latter, are little more than ordinarily those of chil-

dren of eight or nine years old; that her judgment is so defective that she is incapable of transacting the most ordinary and trivial affairs without the guidance and superintendence of her friends, and in particular that she was and is, (as the party proponent expressly alleges and propounds,) utterly incapable of understanding or of validly entering into any matrimonial contract; and this, &c.

Sixth.

That Watts Wilkinson, the other party in this cause, is the lawful cousin german of the said Hannah Keningale Wilkinson, spinster, (being the son of the Reverend Watts Wilkinson, of Sudbury, aforesaid, Clerk, the brother of the aforesaid Reverend Henry Watts Wilkinson,) and was well aware of her weak state of mind, and also of her being entitled in her own right to a property of some considerable amount, under the will of her grandmother, the aforesaid Hannah Keningale. And the party proponent expressly alleges and propounds that the said Watts Wilkinson who was and is a mariner by profession, and hath spent much of his time at sea, having fallen into some pecuniary embarrassment, with the view and for the purpose of getting the control and enjoyment of such the property of the said Hannah Keningale Watts Wilkinson, availed himself of the opportunity afforded by his near relationship to conspire, and devise, and concoct, with divers or some other persons or person unknown to the party proponent, a plan for carrying her off from the custody of those under whose care she then was, and getting a marriage or rather pretended marriage performed, or rather profaned, between himself and the said Hannah Keningale Wilkinson. And the party proponent expressly alleges and propounds that in furtherance of such

plan the said Watts Wilkinson (being then a minor of the age of twenty years and upwards, but under the age of twenty-one years,) on the 23rd day of the month of May last, obtained (howsoever) a license as for the marriage of him the said Watts Wilkinson and the said Hannah Keningale Wilkinson, from the office of the Vicar-General of his Grace the Lord Archbishop, and in the affidavit to lead such license, he the said Watts Wilkinson swore, contrary to the fact, that he had attained his age of twenty-one years; and this, &c.

That in part supply of proof of the premises Seventh.  
in the next preceding article pleaded, and to all other intents and purposes in the law whatsoever, the party proponent exhibits, hereto annexes, and prays to be here read and inserted, and taken as part and parcel hereof, a certain paper writing or exhibit marked No. 2, and alleges and propounds the same to be an official and true copy of the said affidavit to lead the license obtained (howsoever) by the said Watts Wilkinson from the office of the Vicar-General of his Grace the Lord Archbishop of Canterbury, as in the next preceding article pleaded; that the same hath been faithfully extracted from the records kept in the office of the Vicar-General aforesaid, and carefully collated with the said original affidavit made by the said Watts Wilkinson now remaining therein and that the same agrees therewith, and that Hannah Keningale Wilkinson, spinster, and Watts Wilkinson therein-mentioned, and the aforesaid Hannah Keningale Wilkinson, spinster, falsely alleged to be the wife of the said Watts Wilkinson, (acting by her guardian the said Reverend Henry Watts Wilkinson as aforesaid,) and the said Watts

Wilkinson, the parties in this cause, were and are the same persons and not divers; and this, &c.

Eighth.

That having, (to wit, on the 23rd day of May last,) obtained the license aforesaid, in manner aforesaid, he the said Watts Wilkinson, on Saturday the 24th day of the said month, called at the house of the Reverend Joseph Fenn, one of the guardians of the person appointed by the High Court of Chancery as aforesaid, situate in Blackheath Park, in the county of Kent, and where the said Hannah Keningale Wilkinson was staying for a few days in company with Miss Sarah Revell; that the said Watts Wilkinson, who arrived at the said Reverend Mr. Fenn's house about a quarter before ten o'clock in the morning of the said day, then said or pretended that he had been deputed and had come to take his cousin, the said Hannah Keningale Wilkinson, to spend the day with two aunts of theirs, living in Brudenell Place, New North Road, Hoxton, in the county of Middlesex; that the said Hannah Keningale Wilkinson manifesting, (though in a childish way,) much pleasure at the idea of visiting her said aunts, the said Reverend Mr. Fenn readily assented to her accompanying her said cousin to their residence, only stipulating with him, (as did also the said Sarah Revell,) that he should himself take charge of her and bring her back again by six or seven o'clock in the evening. That the said Watts Wilkinson and the said Hannah Keningale Wilkinson then left the house together, in the said Mr. Fenn's chaise, and were driven by his servant as for the Greenwich terminus of the London and Greenwich Railway, but as soon as they were out of sight of the house, the said Watts Wilkinson was desirous to be



and was driven by the servant to the steam-boat pier at Greenwich instead, and where the said servant left the said Watts Wilkinson and the said Hannah Keningale Wilkinson, and returned home. And the party propo-  
nent expressly alleges and propounds that up to such time the said Watts Wilkinson had never had any intercourse of any sort or kind with the said Hannah Keningale Wilkinson, nor had ever seen her, (if at all,) so as to address or speak to her, save in the presence of one or other of the Misses Revell; and this, &c.

That soon after alighting from the said Reverend Ninth.  
Mr. Fenn's chaise, at the steam-boat pier, at Greenwich, as aforesaid, the said Watts Wilkinson took the said Hannah Keningale Wilkinson in a steam-boat to Blackwall, and thence by the Blackwall Railway to the Stepney station, on that railway, and near to which station is the parish church of Saint Dunstan, Stepney. That the said Watts Wilkinson being then and there joined by two persons, accomplices of his, named or using the names of George Andrew Nonweiler and Isabella Nonweiler respectively, immediately took the said Hannah Keningale Wilkinson, (the said two persons accompanying them,) into the said parish church, and where the Reverend John Edmund Cox, Clerk, one of the curates of the said parish, whose presence had been previously bespoken for that purpose, was waiting in order to perform the ceremony of marriage between two persons, and when and where such marriage ceremony was in fact performed, or rather profaned, between him, the said Watts Wilkinson and Hannah Keningale Wilkinson, spinster, according to the rites and ceremonies of the Church of England, by the said Reverend John Edmund Cox, Clerk, (in virtue of the license for that purpose, in fact,

but unduly obtained as aforesaid,) and that an entry of such pretended marriage was afterwards made in the register-book of marriages kept in and for the said parish of Saint Dunstan, Stepney; and the party proponent expressly alleges and propounds that the said Hannah Keningale Wilkinson, spinster, was at the time of such the performance, or rather profanation, of the said marriage ceremony, a person of weak and imbecile or unsound mind, and incapable of contracting marriage or of doing any other serious act requiring thought, judgment, and reflection, and that the said pretended marriage was effected by circumvention and fraudulent means made use of by the said Watts Wilkinson and others engaged and procured by him to assist him therein, and that by reason of the premises such pretended marriage was and is null and invalid in law to all intents and purposes whatsoever; and this, &c.

Tenth.

That in part supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, the party proponent exhibits, hereto annexes, and prays to be here read and inserted and taken as part and parcel hereof, a certain paper writing, or exhibit, marked No. 3, and alleges and propounds the same to be and contain a true copy of the original entry of the pretended marriage of the said Watts Wilkinson and Hannah Keningale Wilkinson, spinster, in the next preceding article mentioned; that the same hath been faithfully extracted from the register-book of marriages, kept in and for the said parish of Stepney, commonly called Saint Dunstan, Stepney, in the county of Middlesex, and carefully collated with the said original entry now remaining therein and found to agree

therewith, and that Watts Wilkinson and Hannah Keningale Wilkinson, therein-mentioned, and Watts Wilkinson and Hannah Keningale Wilkinson, spinster, falsely alleged to be the wife of him, the said Watts Wilkinson, (acting by her guardian the Reverend Henry Watts Wilkinson, aforesaid,) the parties in this cause were and are the same persons and not divers; and this, &c.

That in the course of their passage, on board the steam-boat from Greenwich to Blackwall, the said Watts Wilkinson asked the said Hannah Keningale Wilkinson if she would marry him, to which she answered "no, by no means," or to that effect, but that on his asking her, on their arrival at Stepney Church, if she would like to go and see it, she readily assented; that being on such pretence taken into the church, the said Hannah Keningale Wilkinson, spinster, when there went through the marriage ceremony, (and which was instantly commenced,) doing what she was told to do, (and save as hereinafter excepted,) saying as she was told to say, but unconsciously, and as it were mechanically and without being at all aware of the meaning or nature of the ceremony; that once during the performance or rather profanation of the said rite, when desired by the said Reverend John Edmund Cox to say "I will" she said "no," but that she said it in so timid and child-like a manner that the said Reverend John Edmund Cox did not hear her, and desired her to speak out, saying that else he could not go on with the service, and that upon this the said Isabella Nonweiler one of the accomplices of the said Watts Wilkinson urging her to say so, and the clerk also prompting her at the same time, she at length said "I will," as desired, and thereupon the said Reverend

Eleventh.

John Edmund Cox proceeded with and completed the service; and this, &c.

Twelfth.

That as soon as the said parties had adjourned from the altar to the vestry for the purpose of entering, and as the said Reverend John Edmund Cox was there entering, the pretended marriage in the register-book, the said Hannah Keningale Wilkinson, spinster, took off the ring which had been placed on her finger, and threw it down on the register-book, saying, "It's all a mistake; I'm not married, sir; I'm sure papa will be very angry," or to that very effect, and adding, in a fretful manner, "I said no," meaning during the performance of the service; and that upon the said Reverend John Edmund Cox then saying, "I certainly did not so understand you, or I should have stopped the service," or to that effect, she, the said Hannah Keningale Wilkinson, only kept repeating that it was all a mistake, and that she was not married, as she still insisted. That she also at first and for some time refused to sign the register, and otherwise conducted herself so strangely and incoherently, that the said Reverend John Edmund Cox felt it to be his duty to send, and actually did send, for the rector of the parish, in order to take his instructions as to what was fit to be done in the premises, but that, before the rector's arrival, the said Hannah Keningale Wilkinson, spinster, had been coerced by the urgent remonstrances and solicitations of the said Watts Wilkinson, and others his accomplices, into signing, and at length signed the register, and immediately thereupon all the said parties left the said church. And the party proponent further expressly alleges and propounds, that the conduct and manner of the said Hannah Keningale Wilkinson, during the pre-

mises in this and the next preceding article of this libel mentioned, were such as to convince the said Reverend John Edmund Cox and others who were witnesses thereof, (and which conviction they still entertain,) that she, the said Hannah Keningale Wilkinson was, throughout the premises, mentally weak or imbecile; and this, &c.

That, after leaving the said church, the said Watts Thirteenth. Wilkinson hired a cabriolet, (the first that offered itself,) and therein took or conveyed the said Hannah Keningale Wilkinson, spinster, to the house of her aunts, situate in Brudenell Place, New North Road, Hoxton, aforesaid, where they arrived at about a quarter before one o'clock, and at the door of which house he left her and went away. That previous, however, to such their arrival at the said house, the said Watts Wilkinson told the said Hannah Keningale Wilkinson not to say, or that she need not say, anything to her said aunts about what had occurred, and at the same time took the wedding-ring away from her; but that the said Hannah Keningale Wilkinson, notwithstanding, immediately told her said aunts, as well as she could, all that had taken place, and who (or one of whom,) took her back directly to the house of the Reverend Joseph Fenn, at Blackheath aforesaid, where they arrived with her about half-past four o'clock the same afternoon: and the party proponent expressly alleges and propounds, that the said Watts Wilkinson hath had no communication whatever with the said Hannah Keningale Wilkinson since the time when he left her with, or at the house of, her aunts as aforesaid, and, in particular, that the said pretended marriage between him

and the said Hannah Keningale Wilkinson, spinster, hath never been consummated ; and this, &c.

Fourteenth. That the said Hannah Keningale Wilkinson, spinster, on being taken back to the house of the Reverend Mr. Fenn, as pleaded in the next preceding article of this libel, also gave (so far as she could) an account of what had taken place to the said Reverend Mr. Fenn, Miss Sarah Revell, and others. That, amongst other things, the said Hannah Keningale Wilkinson said, in answer to a question put to her in respect thereto, that she had paid eightpence for her own and the said Watts Wilkinson's fares by the steam-boat from Greenwich to Blackwall, one shilling for their fares by the railway from Blackwall to Stepney, and afterwards half-a-crown for the hire of the cabriolet from Stepney to the house of her aunts at Hoxton ; but the party proponent expressly alleges and propounds, that she could not at all make out how much she had spent altogether, until after a long time and great calculation, having at first, after much consideration, stated the amount at three shillings and twopence. That on being, next day, taken by the Reverend Mr. Fenn to try and find out the church in which the marriage had been had, in passing a church in Watney Street, Christ Church, (totally unlike Stepney Church in situation and appearance,) she said "she was sure that was the church ;" and that, when they came to Stepney Church, "she was equally sure that that (Stepney) was not the church." Also that on being again asked on that day, by Sarah Fenn, (wife of the said Reverend Joseph Fenn,) whether she intended to marry her cousin, the said Hannah Keningale Wilkinson answered, "Oh no ;

he is not steady, and this is not his first offence ;” and upon the said Sarah Fenn inquiring what other offence he had been guilty of, she replied, “ that he had once sat up till two o’clock in the morning ;” and this, &c.

That since the celebration, or rather profanation, of the ceremony of marriage between the said Watts Wilkinson and Hannah Keningale Wilkinson, spinster, as hereinbefore pleaded, she, the said Hannah Keningale Wilkinson, spinster, hath been examined by competent persons, medical men and others, and that the result of such their examination of her has been a conviction in their minds, that she is a person of weak and imbecile mind, and utterly incompetent to understand or transact any serious or important matter, and utterly incapable of contracting herself in lawful matrimony ; and this, &c. Fifteenth.

The residence of the party. Sixteenth.

The jurisdiction of the court. Seventeenth.

That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays that the said pretended marriage, or rather show or effigy of a marriage, so as aforesaid, in fact, though unduly had and solemnized, or rather profaned, between the said Watts Wilkinson and Hannah Keningale Wilkinson, may be pronounced and declared to have been, and to be, absolutely null and void to all intents and purposes in the law whatsoever, by reason of the said Hannah Keningale Wilkinson being, at the time when the said pretended marriage was, as pretended, solemnized, of weak and imbecile or unsound mind, and incapable of forming such a contract, and also by reason of the fraud and Eighteenth.

circumvention practised on the said Hannah Keningale Wilkinson, spinster, by the said Watts Wilkinson and others, upon the said occasion, as hereinbefore pleaded, &c.

*Additional Articles.*

**First.**

That, since the commencement of this cause, an application hath been made to the High Court of Chancery of Great Britain, on behalf of the said Hannah Keningale Wilkinson, by John Chrisp Gooday, her next friend, in order to obtain the sanction of the said High Court of Chancery to the proceedings instituted in this court for the purpose of annulling the pretended marriage between the said Watts Wilkinson and the said Hannah Keningale Wilkinson; and that, a petition having been presented accordingly, the case was heard on Friday, the 18th day of July, 1845, before the Lord Chancellor, who, after hearing the said petition and certain orders of the said High Court of Chancery, dated respectively the 18th day of October, 1837; the 1st day of August, 1838; and the 28th day of November, 1839; a decree, dated the said 28th day of November, 1839; the Master's general report, dated the 30th day of January, 1841; and certain further orders, dated the 15th day of July, 1842, and the 28th day of April, 1843; and certain affidavits, filed in support of the said petition, read, and counsel on both sides, was pleased to order that Henry Watts Wilkinson, Thomas Fenn Addison, William Bestoe Smith, and Joseph Fenn, the guardians of the said Hannah Keningale Wilkinson, be at liberty to prosecute the suit commenced in the Consistory Court of London, by and in



the name of the said Henry Watts Wilkinson, as the father of the said plaintiff, for annulling the pretended marriage between Watts Wilkinson, in the said petition named, and the said Hannah Keningale Wilkinson, with the sanction of the said High Court of Chancery; and his Lordship reserved the consideration of costs, but directed that any of the parties should be at liberty to apply to the said High Court of Chancery as there should be occasion; and this, &c.

That in supply of proof of the premises in the next preceding article mentioned, and to all other intents and purposes in the law whatsoever, the party propo- **Second.**  
nent exhibits, hereto annexes, and prays to be here read and inserted, and taken as part and parcel hereof, a certain paper writing, or exhibit, marked No. 4, and alleges and propounds the same to be and contain a true and correct copy of the order made by the Lord Chancellor on Friday, the 18th day of July, 1845, as in the next preceding article mentioned; that the contents of the said exhibit were and are true; that all things were so had and done as therein contained; and that Hannah Keningale Wilkinson, therein mentioned as the petitioner suing by John Chrisp Gooday, her next friend, and Watts Wilkinson, therein also mentioned as her pretended husband, and Hannah Keningale Wilkinson and Watts Wilkinson, her pretended husband, the parties in this cause, were and are the same persons, and not divers; and this, &c.

That all and singular the premises were and are true, **Third.**  
and so forth.

*Sentence.*

Sentence of nullity of marriage by reason of former marriage.

In the name of God, amen. We the Right Honourable Stephen Lushington, Doctor of Laws, Vicar-General of the Right Honourable and Right Reverend Father in God, Charles James, by Divine permission Lord Bishop of London, and Official Principal of the Consistorial and Episcopal Court of London, lawfully constituted, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed the merits and circumstances of a certain cause of nullity of marriage, by reason of Hannah Keningale Wilkinson, spinster, being, at the time of the solemnization, or rather profanation, of the said marriage, a person of weak and imbecile, or unsound mind, and incapable of forming such a contract, and also by reason of the fraud and circumvention practised on her, the said Hannah Keningale Wilkinson, spinster, by Watts Wilkinson and others, upon the occasion of the said pretended marriage, now depending in judgment before us in the said court, promoted and brought by Hannah Keningale Wilkinson, acting by the Reverend Henry Watts Wilkinson, of Sudbury, in the county of Suffolk, Clerk, the natural and lawful father, and one of the guardians of the person of the said Hannah Keningale Wilkinson, spinster, lawfully appointed by the High Court of Chancery of Great Britain, the party agent and complainant, on the one part, against the said Watts Wilkinson, of the parish of Saint Mary, Islington, in the county of Middlesex, and diocese of London, (falsely calling himself, and pretending to be, the lawful husband of the said Hannah Keningale Wilkinson,)

on the other part, and the parties aforesaid lawfully appearing before us in judgment by their proctors respectively, and the proctor of the said Hannah Kenningale Wilkinson, spinster, (falsely alleged to be the wife of the said Watts Wilkinson,) acting by her guardian aforesaid, earnestly praying sentence to be given for, and justice to be done to, his party, and the proctor of the said Watts Wilkinson praying justice to be done to his party; and we, having carefully and diligently searched into and considered the whole proceeding had and done before us in the cause, and having observed all and singular the matters and things which by law in this behalf ought to be observed, have thought fit, and do thus think fit, to proceed to the giving our definitive sentence or final decree in the said cause in manner following, to wit:—Forasmuch as, by the acts enacted, deduced, alleged, exhibited, propounded, proved, and confessed in the said cause, we have found, and it doth evidently appear unto us, that the proctor of the said Hannah Kenningale Wilkinson, spinster, (falsely alleged to be the wife of the said Watts Wilkinson,) acting by her guardian as aforesaid, hath, as to what is hereinafter to be pronounced by us, sufficiently founded and proved his intention deduced in a certain libel and exhibits, and also in certain additional articles to the said libel, (with an exhibit thereto,) given and exhibited, and admitted on the part and behalf of the said Hannah Kenningale Wilkinson, spinster, in the said cause, and now remaining in the registry of the said cause, (which said libel and exhibits, and additional articles and exhibit, we take and will to have taken as if here read and inserted,) for us to pronounce, as hereinafter is pronounced, and that

nothing, at least effectual, hath, on the part and behalf of the said Watts Wilkinson, been excepted, deduced, alleged, exhibited, propounded, proved, or confessed in the said cause, which may or ought in any wise to prejudice or weaken such intention : therefore we, Stephen Lushington, Doctor of Laws, the judge aforesaid, having heard counsel on both sides, do pronounce, decree, and declare that, on the 24th day of May, in the year of our Lord 1845, a pretended marriage was had and solemnized, or rather profaned, at the parish church of Saint Dunstan, Stepney, in the county of Middlesex, according to the rites and ceremonies of the Church of England as by law established, between the said Watts Wilkinson and Hannah Keningale Wilkinson, spinster, (falsely alleged to be the wife of the said Watts Wilkinson,) but that, at the time of the solemnization, or rather profanation, of the said marriage, she, the said Hannah Keningale Wilkinson, spinster, (falsely alleged to be the wife of the said Watts Wilkinson,) was a person of weak and imbecile or unsound mind, and incapable of forming such a contract, and that fraud and circumvention were practised on the said Hannah Keningale Wilkinson, spinster, (falsely alleged to be the wife of the said Watts Wilkinson,) upon that occasion : therefore, and for the reasons above-mentioned, we do pronounce, decree, and declare, that the said pretended marriage, so had and solemnized, or rather profaned, between the said Watts Wilkinson and Hannah Keningale Wilkinson, spinster, (falsely alleged to be the wife of the said Watts Wilkinson,) was and is absolutely null and void to all intents and purposes whatsoever ; and we do pronounce, decree, and declare, that the said Hannah Keningale Wilkinson, spinster,

(falsely alleged to be the wife of the said Watts Wilkinson,) was and is free from all bond of marriage with the said Watts Wilkinson, by this our definitive sentence or final decree, which we read and promulge by these presents.

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## NULLITY OF MARRIAGE UNDER 4 GEO. IV. C. 76.

THE general celebration of marriages is regulated, in England, by the 4 Geo. IV. c. 76, (entitled "An Act for amending the Laws respecting the Solemnization of Marriages in England,") and the infraction or contravention of certain of its provisions carries with it the absolute nullity of the contract.

The clause of the act which more particularly applies to the validity or invalidity of a marriage, is as follows, section 22 :—"If any persons shall knowingly and wilfully intermarry in any other place than a church or such public chapel wherein banns may be lawfully published, unless by special license as aforesaid, or shall knowingly and wilfully intermarry without due publication of banns, or license from a person or persons having authority to grant the same, first had and obtained, or shall knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever."

It is my intention here to treat only of the proceedings taken to obtain a sentence declaratory of nullity *inter vivos*; for, where a marriage is put in issue after the death of either or both of the parties, the form is changed, and the question assumes the form of an interest cause in the Court of Probate (a).

The only suits which have yet, as far as I am aware, been *sustained*, under the clause before recited, have had reference either to a false or an undue publication of banns (b, to which I shall therefore confine myself.

We have seen that the statute requires all marriages, except in the case of a license, to be performed by proclamation of banns, which is to designate the individual. In the case of minors, this is done in order to awaken the vigilance of parents and guardians, and to give them an opportunity of protecting their rights (c).

Where either of the parties, with the consent or connivance of the other, in order to effect a fraud upon a third party, such as a parent or guardian, or otherwise to procure clandestinity, has suppressed a true name, or added a false one, or altered or disguised the real character or *status* of either of them, such an act will constitute an undue publication of banns, under the before-recited section, as that cannot be a public notification of an intended marriage, where the banns are uttered under a false name or description (d.)

The following will serve as forms to be used in this suit:—

(a) *Wilson v. Brockley*, Phill. R. 1, p. 132.

(b) See *Ewing v. Wheatley*, Hagg. C. R. vol. 2, p. 180, as to fraud in a license.

(c) *Wakefield v. Wakefield*, Hagg. C. R. vol. 1, p. 401.

(d) *Tongue v. Allen*, Curt. 1, pp. 38 and 48. (Arches and Judicial Committee.)

*Citation.*

Charles James, by Divine permission Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting :

Citation for nullity of marriage under 4 Geo. 4. c. 76.

We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, Mary Ann Allen, widow, of the parish of Saint Bride, Fleet Street, in the city and diocese of London, falsely calling herself Mary Ann Tongue, and pretending to be the wife of Edward Croxall Tongue, a minor, to appear personally, or by her proctor duly constituted, before the Worshipful Stephen Lushington, Doctor of Laws, Vicar-General and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after she shall have been served with these presents, if it be a general session, bye-day, or additional court-day of our said court, otherwise on the general session, bye-day, or additional court-day of our said court, then next ensuing, at the hour of the sitting of the court, and there to abide, if occasion require, during its continuance, then and there to answer to Edward Tongue, of the parish of Aldridge, in the county of Stafford, Esquire, the natural and lawful father, and as such the natural guardian of the said Edward Croxall Tongue, the minor aforesaid, in a cer-

tain cause of nullity of marriage, by reason of his minority and the undue publication of banns ; and further, to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Edward Tongue, Esquire ; and what you shall do or cause to be done in the premises, you shall duly certify our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, the fourth day of January, one thousand eight hundred and thirty-four, and in the sixth year of our translation.

### *Libel.*

Libel of nullity of marriage under 4 Geo. 4. c. 76.

First.

In the name of God, amen, &c.

That in and by an act of Parliament, passed in the fourth year of the reign of his late Majesty, King George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriages in England, it was, amongst other things, enacted, "that from and after the first day of November, one thousand eight hundred and twenty-three, all banns of matrimony shall be published in the manner and at the time therein specified ;" and it is by the said act further enacted, in the words or to the tenor following, to wit : "it is hereby further enacted, that no parson, minister, vicar, or curate shall be obliged to publish the banns of matrimony between any person whatsoever, unless the persons to be married shall, seven days at the least before the time required for the first publication of such banns, respectively deliver, or cause to be delivered, to such parson, minister, vicar, or curate, a notice in



writing, dated on the day on which the same shall be so delivered, of their true Christian names and surnames, and of the house or houses of their respective abodes, within such parish or chapelry as aforesaid, and of the time during which they have dwelt, inhabited, or lodged in such house or houses respectively." And it is by the said act further enacted, "if any persons shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns may be lawfully published, unless by special license; or shall knowingly and wilfully intermarry without due publication of banns or license, from a person or persons having authority to grant the same first had and obtained; or shall knowingly and wilfully consent to, or acquiesce in, the solemnization of such marriage by any person not being in holy orders, the marriage of such persons shall be null and void to all intents and purposes whatsoever," as in and by the said act of Parliament, (to which the party proponent craves leave to refer, and doth allege and propound the same to be a public act,) doth appear; and this was and is true, public, and notorious, and so much the said Mary Ann Allen, widow, falsely calling herself Tongue, and pretending to be the wife of the said Edward Croxall Tongue, the minor aforesaid, doth know, or hath heard, and in her conscience believes, and hath confessed to be true, and the party proponent doth allege and propound everything in this and the subsequent articles of this libel contained jointly and severally.

That the said Edward Croxall Tongue, the minor Second. aforesaid, was and is the natural and lawful and eldest son of Edward Tongue, Esquire, a gentleman possessed of

considerable landed property on which he resides, at Aldridge, in the county of Stafford, and of Sidney Tongue, his wife. That the said Edward Croxall Tongue was born on or about the fourth day of the month of May, in the year of our Lord 1815, and was shortly afterwards baptized in the parish church of Aldridge aforesaid, on or about the fifteenth day of October, in the year 1815, by the names of "Edward Croxall," and an entry of such baptism was then made in the register-book of baptism, kept in and for the said parish; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

Third.

In part supply of proof of the premises in the next preceding article mentioned, and to all intents and purposes in the law whatsoever, the party proponent doth exhibit, hereto annex, and pray to be here read and inserted, taken as part and parcel hereof, a certain paper writing, marked No. 1, and doth allege and propound the same to be and contain a true and faithful copy of the original entry of the baptism of the said Edward Croxall Tongue, now remaining in the register-book of baptisms, kept in and for the said parish of Aldridge: that the same hath been faithfully extracted from the said register-book of baptisms, and carefully collated with its original entry now remaining therein, and agrees therewith that all and singular the contents of the said exhibit were and are true, that all things were so had and done as are therein contained; and that "Edward Croxall Tongue, son of Edward and Sidney Tongue," therein mentioned, and Edward Croxall Tongue, a minor, hereinafter mentioned, son of

Edward Tongue, Esquire, the party proceeding in this cause, was and is one and the same person, and not divers; and this was and is true, and the party proponent doth allege and propound as before.

That the said Mary Ann Allen, widow, falsely calling herself Tongue, did, on the                      day of the month of                      , 18                      , being then Mary Ann Atchison, spinster, duly and lawfully intermarry with

Fourth.

Allen, and that from and after such intermarriage, they, the said                      Allen and the said Mary Ann Allen, lived and cohabited together as lawful husband and wife, and for and as such he the said Allen and the said Mary Ann Allen were commonly accounted, taken, and reputed to be by their relations, friends, and acquaintance. That the said Allen departed this life in the month of                      , 18                      , leaving the said Mary Ann Allen his lawful widow and relict; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

That the said Edward Croxall Tongue, the minor aforesaid, was placed by his said father at school, under the care of William Cowan Atchison, at Edgbaston, near Birmingham, in the county of Warwick, between three and four years ago; and that in or about the month of September, 1832, the said William Cowan Atchison removed with his school establishment to Keynsham, in the county of Gloucester; and in the month of January, 1833, Randle Francis Tongue, the second son of the said Edward Tongue, was also placed under the said William Cowan Atchinson; that the said Mary Ann Allen, widow, is the sister of the said William Cowan Atchinson, and acted as his ser-

Fifth.

vant and housekeeper, and managed the affairs of his establishment at Edgbaston and at Keynsham aforesaid, and attended to his pupils therein: and the party proponent doth further allege and propound, that the said Edward Croxall Tongue first became acquainted with the said Mary Ann Allen, widow, who is of the age of thirty-five years, or thereabouts, on his so as aforesaid becoming a pupil at Keynsham as aforesaid, and that he was at such time of the age of seventeen years; and that he the said Edward Croxall Tongue was induced, by the arts and persuasions of the said Mary Ann Allen, widow, to consent to be married to her as is hereinafter more particularly mentioned: That the said parties well knowing and believing that such their intended marriage would be highly displeasing to the aforesaid Edward Tongue, the natural and lawful father of the said Edward Croxall Tongue, then resident at Aldridge, in the county of Stafford aforesaid, it was, at the suggestion and instigation of the said Mary Ann Allen, widow, concerted and agreed between them, the said Edward Croxall Tongue and Mary Ann Allen, widow, falsely called Tongue, that for the express purpose of effecting the same clandestinely, and without the knowledge of him the said Edward Tongue and others, the banns for their said intended marriage should be published in the names and under the descriptions of Edward Tongue, bachelor, and Mary Ann Allen, spinster; and accordingly the said Edward Croxall Tongue, being then of the age of seventeen years and upwards, but under the age of eighteen years, did, with the privity and consent, and at the procurement and instigation of the said Mary Ann Allen, widow, and while so residing as a pupil with the said William

Cowan Atchison, at Keynsham aforesaid, cause the banns of marriage to be published in the parish church of Saint Michael, in the city of Bristol, for three successive Sundays, to wit, on Sunday, the 10th day of February, Sunday the 17th of February, and Sunday the 24th of February, between him the said Edward Croxall Tongue, bachelor, and her the said Mary Ann Allen, widow, described respectively therein as Edward Tongue, bachelor, and Mary Ann Allen, spinster; and the party proponent doth expressly allege and propound, that the said Edward Croxall Tongue was baptised by the name of Edward Croxall Tongue, and hath constantly and upon all occasions previously to the said publication of banns, used, passed, and been known by the christian name of Croxall, and not at all by the name of Edward, which was entirely dormant and disused, and that as well before as after the said publication of banns the said Mary Ann Allen, widow, herself was constantly in the habit of addressing and speaking of him by the name of Croxall, and no other: and that the said Mary Ann Allen hath constantly, and on all occasions, been styled and known and hath passed as Mary Ann Allen, widow, save and except on the occasion of the said pretended publication of banns, and of the pretended marriage hereinafter pleaded: and that the said name of Croxall was knowingly and wilfully omitted, and the false description of spinster was knowingly and wilfully substituted for the true description of widow, by the said parties respectively, in the undue and illegal publication of the said banns for the purpose of deception and concealment, and expressly in order to effect a clandestine celebration of the said then intended marriage; and this was and is

true, public, and notorious, and the party proponent doth allege and propound as before.

Sixth.

That in pursuance of the banns of marriage so unduly and illegally published as aforesaid, a pretended marriage was, on or about the 26th day of February, in the year 1833, in fact, illegally had, and solemnized in the aforesaid parish church of Saint Michael, in the city of Bristol, by the Reverend J——— B——— Jebb, a Priest or Minister in Holy Orders, or then officiating as such, between the said Edward Croxall Tongue, bachelor and Mary Ann Allen, widow, in the name of Edward Tongue only, and Mary Ann Allen, spinster, and by no other name or names, or description or descriptions, whatsoever; and that an entry of such pretended marriage was made in the register-book of marriages kept in and for the said parish, for the said year 1833; and the party proponent doth further expressly allege and propound, that the said pretended marriage was then had and solemnized at the time and place before particularly set forth under the aforesaid pretended publication of banns, and without the consent or even knowledge of the said Edward Tongue, Esquire, or Sidney Tongue, his wife, the natural and lawful father and mother of the said Edward Croxall Tongue, the minor aforesaid, or without license from any person or persons having authority to grant the same being previously obtained; and therefore, and by reason of the premises, such pretended marriage was and is absolutely null and void, to all intents and purposes in the law whatsoever; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

That in part supply of proof of the premises in the Seventh.  
fifth and next preceding articles mentioned, and to all  
other intents and purposes in the law whatsoever, the  
party proponent doth exhibit, hereto annex, and pray  
to be here read and inserted, and taken as part and par-  
cel hereof, two certain paper writings or exhibits, marked  
No. 2 and No. 3; and doth allege and propound the  
said paper writing or exhibit, marked No. 2, to be and  
contain a true copy of the entry made in the banns'-  
book, touching the said banns of matrimony so published  
in the said parish church; and the said paper writing or  
exhibit, No. 3, to be and contain a true copy of the ori-  
ginal entry of the said pretended marriage, in pursuance  
of the said pretended publication of banns as men-  
tioned in the fifth and next preceding articles. That  
the said paper writings have been faithfully extracted  
from the register-book of banns and marriages kept in  
and for the said parish of Saint Michael, in the city of  
Bristol, in the said year, and carefully collated with the  
originals now remaining therein, and found to agree  
therewith: that all and singular the contents of the  
said exhibits were and are true; that all things were  
so in fact, but illegally had and done as therein con-  
tained; and that Edward Tongue and Mary Ann Allen,  
spinster, mentioned in the said entry of banns, and who  
were in fact married in pursuance of the said undue  
publication of banns, and Edward Tongue and Mary  
Ann Allen, spinster, mentioned in the said entry of  
marriage, and Edward Croxall Tongue, son of Edward  
Tongue, the party promoting this cause, and Mary Ann  
Allen, widow, the party against whom this cause is pro-  
moted, were and are the same persons, and not divers;

and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

Eighth.

That the name, "Edward Tongue," set and subscribed to the original entry of the pretended marriage, so in fact had and solemnized between the said Edward Croxall Tongue and the said Mary Ann Allen, now falsely calling herself Tongue, the parties in this cause, was and is of the hand-writing of the said Edward Croxall Tongue, and is so well known, or believed to be, by divers persons who are well acquainted with the manner and character of his hand-writing, and have carefully inspected such signature thereto; and that the name, "Mary Ann Allen," also set and subscribed to the original entry, was and is of the hand-writing of the said Mary Ann Allen, now falsely calling herself Tongue, and is so well known and believed to be, by several persons who are well acquainted with the manner and character of her hand-writing, and have carefully inspected such signature thereto; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

Ninth.

That on the 26th day of February, 1833, the said Mary Ann Allen, widow, proceeded, accompanied by the said Edward Croxall Tongue, to the city of Bristol, when and where the said pretended marriage took place, on the pretence of wishing to make some purchases. That the said Edward Croxall Tongue having previously given notice, through Samuel Quinton, the sexton of the said parish, that the said pretended marriage was to be solemnized on such day, and requested him to attend and procure another witness; he the said Samuel Quinton and Sarah Haines, widow, did accord-



ingly attend at, and were the only witnesses to, such pretended marriage. That after such pretended marriage, they, the said Edward Croxall Tongue and Mary Ann Allen, widow, returned to Keynsham aforesaid, and he the said Edward Croxall Tongue continued his usual course of education as before the said pretended marriage, and went home as usual for the Midsummer vacation, in the month of June, in the said year 1833, with his said brother, and unaccompanied by the said Mary Ann Allen, to Aldridge aforesaid, without any suspicion of the said marriage having been excited in any of his relations or friends. That the said Edward Croxall Tongue returned to the school of the said William Cowan Atchinson, who had, at the latter end of August or beginning of September, of the said year 1833, removed to Ashly Place, in the city of Bristol, and continued his studies as before; and unaccompanied by the said Mary Ann Allen, again visited Aldridge aforesaid, at the vacation at Christmas, in the month of December, 1833; when the said Edward Tongue, Esquire, having been informed of an appearance of undue intimacy between his said son, Edward Croxall Tongue, and the said Mary Ann Allen, widow, questioned him thereon, and then first became informed that he, the said Edward Croxall Tongue, was married to her, the said Mary Ann Allen, widow. That from and after such discovery, the said Edward Croxall Tongue remained at the house of the said Edward Tongue, Esquire, until he was sent abroad, where he has ever since remained, and has not had any interview or communication with the said Mary Ann Allen since quitting the city of Bristol, in the month of December, 1833, as hereinbefore pleaded; and this was and is true,

public, and notorious, and the party proponent doth allege and propound as before.

Tenth.

That the said Mary Ann Allen, widow, was and is of the parish of Saint Bride, in the city of London and diocese of the same, and therefore, and by reason of the premises, was and is subject to the jurisdiction of this court; and this was and is true, and the party proponent doth allege and propound as before.

Eleventh.

That all and singular the premises were and are true, public, and notorious, and thereof was and is public voice, fame, and report, of which legal proof being made, the party proponent prays right and justice to be effectually done and administered to him and his party in the premises; and that the said pretended marriage, however in fact, had and solemnized between them the said Edward Croxall Tongue and Mary Ann Allen, widow, (falsely calling herself Tongue, and pretending to be the wife of the said Edward Croxall Tongue,) may be pronounced null and void, to all intents and purposes in the law whatsoever, pursuant and agreeably to the aforesaid Act of Parliament, passed in the fourth year of the reign of His late Majesty, King George the Fourth, intituled "An Act for amending the Laws respecting the Solemnization of Marriages in England;" which said Act of Parliament, at the time the aforesaid pretended marriage was solemnized, was in full force and virtue; and that otherwise right and justice may be effectually done and administered in the premises, by you, and your definitive sentence or final decree to be given in this behalf.

## TESTAMENTARY CAUSES.

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**THERE** are two modes in which the proceedings in a testamentary suit are generally commenced, viz., by caveat and decree.

The first is always a compulsory step, taken by the opponents of a will against the executor or other person interested in sustaining it, while the latter may be either voluntary or compulsory, on the part of such executor, according as the decree is issued by or against himself.

I will first consider the method of proceeding by caveat, as the one most usually adopted in these cases.

The party intending to oppose the will, and put the executor to a solemn proof of its validity and genuineness, having of course a sufficiency of interest to entitle him to take this step, either as next of kin, or as interested under another will, records, through his proctor, in the caveat-book kept for that purpose in the registry of the court, a caution against any grant of probate of the will in question being allowed to pass the seal, in the *common* or uncontested form, without previous notice being given to his proctor that such an application has been made.

The caveat is very simple in form, and does not contain the name and description, or the specific interest,



**In the Prerogative Court of Canterbury.**

Warn Mr. \_\_\_\_\_ to the caveat entered by him  
in the goods of A. B., late of \_\_\_\_\_, deceased, to  
appear before a surrogate, in his chambers, (or before  
the Right Honourable the Judge, in the Common  
Hall,) on Wednesday next, the seventh day of June  
instant, at twelve o'clock at noon, and set forth his  
client's interest.

**Addams will appear for E. F., the sole executor named in the true and original last will and testament of the said deceased, bearing date the                      day of                      , 1840 ; will allege him to have been duly sworn as usual, and will pray probate to pass the seal to his party.**

**Doctors' Commons, 13th June, 1846.**

The warning, being of the nature of a citation, is served by the apparitor, or officer of the court, on the other proctor, the original being left with him.

On the day fixed for the appearance, both proctors, who have previously *written to the caveat*, i. e. have set forth their respective averments and prayers in the court-book, go before a surrogate, accompanied by the registrar, or appear in court, as the case may be, and submit to the usual assignments. If the will is opposed by a next of kin, the executor is assigned to answer to his interest, i. e. to admit or deny the fact of relationship, and consequently the title of the individual to oppose; and both the proctors are also assigned to exhibit proxies from their respective parties.

Both parties having now determined on the course to be adopted, furnish their respective proctors with proxies or authorities to prosecute or defend the suit in their names.

Having arrived at this stage, I will recur to the other proceeding by decree, as, in all but the mere preliminary acts, the same method is pursued in both.

The decree may issue at the instance either of the executor or of the next of kin, and also either before or after probate has been taken of the will which it is intended to dispute.

I will begin with the decree at the suit of the executor, before he has taken or applied for probate. This is always a voluntary act on his part. It is done where the executor, from the circumstances which have attended the execution of the will, apprehends litigation on the part of the next of kin, but does not choose to wait for it; and it is also a proceeding very frequently adopted in those cases where minor or lunatic next of kin are excluded from any participation in the estate of the deceased by the provisions of the will. In the latter instance it is a convenient course, and is excellently adapted to prevent future litigation, at a time, probably, when the executor or other persons interested in sustaining the will may, from the deaths of witnesses and other casualties, be deprived of necessary and previously competent evidence.

The decree with intimation is as follows :—

*Decree to see a Will propounded.*

Decree to see a will pro- pounded at	William, by Divine Providence Archbishop of Canter- bury, Primate of England, and Metropolitan, to
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all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting :

the instance  
of an exe-  
cutor against  
the next of  
kin.

Whereas it hath been alleged before the Worshipful  
 , Doctor of Laws, Surrogate of the Right  
 Honourable Sir Herbert Jenner, Knight, also Doctor of  
 Laws, Master, Keeper, or Commissary of our Preroga-  
 tive Court of Canterbury, lawfully constituted, on the  
 part and behalf of Boyd Miller and James Dunlop,  
 that Patrick Hart, late of , in the county of  
 , Esquire, deceased, (having, whilst living,  
 and at the time of his death, goods, chattels, or credits,  
 in divers dioceses or jurisdictions, within our said pro-  
 vince, sufficient to found the jurisdiction of our said  
 court,) died on the fifth day of July last, a widower,  
 without child or parent, having first made and duly  
 executed his last will and testament in writing, bearing  
 date the                      day of                      , in the year  
 , and thereof appointed the said Boyd Miller  
 and James Dunlop executors, and that he left him sur-  
 viving, Thomas Hart and Jane Hart, spinster, his natu-  
 ral and lawful brother and sister, and only next of kin,  
 the only persons who would have been entitled in dis-  
 tribution to his personal estate and effects, in case he  
 had died intestate : and whereas it was further alleged  
 that the said Boyd Miller and James Dunlop are about  
 to propound the validity of the said will, in order to  
 obtain the judgment of our said Prerogative Court  
 thereon : and whereas the surrogate aforesaid, rightly  
 and duly proceeding in the premises, hath, at the peti-  
 tion of the proctor of the said Boyd Miller and James  
 Dunlop, decreed the said Thomas Hart and Jane Hart  
 to be cited, intimated, and called to appear in judgment

on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, justice so requiring: we do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause to be cited the said Thomas Hart and Jane Hart, spinster, by shewing to them these original presents, under seal, and by leaving with each of them a true copy hereof, to appear personally, or by their proctors or proctor duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the first session of Hilary Term, to wit, the day of                      next ensuing, and also on every other court-day, then and there to see and hear the said last will and testament of the said deceased propounded and proved by witnesses in solemn form of law, and all and every the judicial acts, matters, and things needful and by law required to be done and expedited in and about the premises, until a definitive sentence in writing shall be read, signed, promulged, and given, or until a final interlocutory decree shall be made and interposed in the said cause or business, if they or either of them shall think it for their, his, or her interest so to do, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Boyd Miller and James Dunlop; and moreover that you intimate, or cause it to be intimated, to the said Thomas Hart and Jane Hart, (and to whom we do also intimate by the tenor of these presents,) that if they,



he, or she, do or does not appear on the day, at the time and place, to the effect, and in manner and form, as hereinbefore is mentioned, or appearing, do or does not shew good and sufficient cause, concludent in law, to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed, and will proceed, to see and hear the said last will and testament of the said deceased propounded and proved by witnesses in solemn form of law, and to do all and every the judicial acts, matters, and things needful and by law required to be done in and about the premises, and to read, sign, promulge, and give a definitive sentence in writing, or to make and interpose a final interlocutory decree in the said cause or business, the absence, or rather contumacy, of the said Thomas Hart and Jane Hart, so cited and intimated as aforesaid, in anywise notwithstanding ; and what you shall do or cause to be done in the premises you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Given at London, under seal of our said Prerogative Court of Canterbury, the                      day of                      ,  
in the year of our Lord                      , and in the  
year of our translation.

(L.S.) CHAS. DYNELEY, }  
JOHN IGGULDEN, } Deputy  
W. F. GOSTLING, } Registrars.

*Decree to see Substance of Will propounded.*

Decree to see  
substance of  
will pro-  
pounded at  
the instance  
of executors  
against next  
of kin.

William, &c.

Whereas the worshipful, &c., hath, at the petition of the proctor of Martha Humfrey, widow, alleging that Joseph Humfrey, late of Upton, in the county of Berks, deceased, (having whilst living, &c.,) departed this life on the 21st day of November, 1842; that the said deceased whilst living, to wit, on a day happening in the month of November, in the year 1831, made and duly executed his last will and testament, in writing, in the presence of three credible persons, who attested and subscribed the same as witnesses of the due execution thereof, and that he, the said deceased, in and by his said will, gave and bequeathed the whole of his estate and property to his brothers Thomas Humfrey, John Humfrey, and William Humfrey, and Job Lousley and Daniel Lousley in trust, to sell and dispose of the same when his youngest child should become of age, and to allow his wife, the said Martha Humfrey, the annual sum of £200 for and during her life, and to divide the residue of his said property amongst all his children; the girls to have two-thirds as much as the boys; and that no executor or other legatee was named in the said will; and further alleging, that after the execution of the said will, the said deceased did not make or execute any other will or testamentary disposition valid in law, or in any way revoke or annul the same; and further alleging, that since the death of the said deceased, the said will was incautiously and unadvisedly destroyed by the said Martha Humfrey, widow, and that no draft or copy of the same is now in existence; and further

alleging, that the said deceased left him surviving the said Martha Humfrey, widow, his lawful relict, and Hannah Humfrey, spinster, Nathaniel Humfrey, Philip Humfrey, Phoebe Humfrey, spinster, Grace Humfrey, spinster, and Mercy Humfrey, spinster, his natural and lawful and only children respectively, the only persons who would have been entitled in distribution to his personal estate and effects, in case he had died intestate, and that the said Hannah Humfrey, Nathaniel Humfrey, Philip Humfrey, and Phoebe Humfrey are now in their minority; to wit, the said Hannah Humfrey of the age of nineteen years and upwards, the said Nathaniel Humfrey of the age of fourteen years and upwards, the said Philip Humfrey of the age of thirteen years and upwards, and the said Phoebe Humfrey of the age of nine years and upwards, but respectively under the age of twenty-one years; and that the said Grace Humfrey and Mercy Humfrey are now in their infancy; to wit, the said Grace Humfrey of the age of four years and upwards, and the said Mercy Humfrey of the age of two years and upwards, but respectively under the age of seven years, (as in and by an affidavit, &c.); and lastly alleging, that the said Martha Humfrey is desirous of propounding the contents or substance or effect of the said last will and testament of the said deceased, as embodied or contained in the aforesaid affidavit: decreed the said Hannah Humfrey, spinster, Nathaniel Humfrey, Philip Humfrey, Phoebe Humfrey, spinster, Grace Humfrey, spinster, and Mercy Humfrey, spinster, to be cited, intimated, and called to appear in judgment on the day, at the time and place, to the effect and in manner and form hereinafter

mentioned, (justice so requiring.) We do, therefore, hereby authorize, &c., by shewing, &c., to appear lawfully, &c., on the first session of Michaelmas Term, to wit, Tuesday, the 7th day of November, 1843, and also on every other court-day, then and there to see and hear the contents or substance or effect of the said last will or testament of the said deceased, as embodied or contained in the aforesaid affidavit propounded, and proved by witnesses in solemn form of law; and all and every other the judicial acts, matters, and things needful, and by law required to be done and expedited, in and about the premises, until a definitive sentence shall be read, signed, promulged, and given, or a final decree shall be made and interposed in the premises, if they, any, or either of them shall think it for their interest so to do; and further to do, &c. And, moreover, that you intimate, &c., our master, keeper, or commissary aforesaid, &c., will proceed to hear the contents or substance or effect of the said last will and testament, as contained or embodied in the aforesaid affidavit, propounded, &c.; and to do all and every other the judicial acts, matters, and things needful, and by law required to be done and expedited in and about the premises, and to read, sign, promulge, and give a definitive sentence in writing, or to make and interpose a final interlocutory order or decree therein, the absence, &c.

3rd October, 1843, &c.

*Decree.*

William, &c.

Whereas the Worshipful William Calverley Curteis, Doctor of Laws and Surrogate of the Right Honourable Sir John Nicholl, Knight, also Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding at the petition of the proctor of Thomas Wargent, Eleanor Young, (wife of Henry Young,) and Catherine Newman, (wife of John Newman,) alleging that William Pennell, late of the parish of Yarkhill, in the county of Hereford, Yeoman, departed this life on the 4th day of July, 1829, having whilst living and at the time of his death, &c. That the said deceased whilst living, to wit, on or about the 11th day of June, in the said year 1829, made and executed his last will and testament in writing, in the presence of three credible persons, who attested and subscribed the same as witnesses to the due execution thereof, and that the said deceased, in his said will, named his nephew, Samuel Wargent, sole executor, Richard Hollings and Joseph Abell residuary legatees in trust, and the said Thomas Wargent, Eleanor Young, and Catherine Newman, heretofore Wargent, his nephew and nieces legatees, and also three of the residuary legatees. And further alleging, that the paper writing marked A, annexed to a certain affidavit, duly made by the said Thomas Wargent, Eleanor Young, and Catherine Newman, contains a true and exact copy of the said original last will and testament of the said deceased, save as to the date thereof, together with the clause of

Decree, at the instance of residuary legatees against executors, to bring in and prove a will, or shew cause, &c., and against next of kin to shew cause, &c., and also to see proceedings.

attestation and the signatures of the three subscribed witnesses. And further alleging, that since the death of the said deceased, his said true and original last will and testament hath not been forthcoming, and the same is falsely asserted to have been cancelled or destroyed by him, the said deceased. And lastly alleging, that the said deceased died a bachelor, without parent, leaving behind him Mary Wargent, widow, Elizabeth Gammond, (wife of John Gammond,) and Catherine Hollings, (wife of Richard Hollings,) his natural and lawful sisters, only next of kin, and the only persons who would have been entitled in distribution to his personal estate and effects in case he had died intestate, (as in and by the aforesaid affidavit, with the said copy of the said will annexed, produced, and shewn to the said surrogate, and now remaining in the registry of our said court, relation being thereunto had, will appear.) Hath decreed the said Samuel Wargent, Richard Hollings, Joseph Abell, Mary Wargent, Elizabeth Gammond, and Catherine Hollings to be cited, intimated, and called to appear, &c., on the first session of Hilary Term, to wit, &c., then and there to bring into and leave in the registry of our said court the said true and original last will and testament of the said deceased, if the same shall be in the possession or under the control of them, or any or either of them; and the said Samuel Wargent, Richard Hollings, and Joseph Abell, then and there, in case the said will shall be brought into the said registry, to accept or refuse probate of the same or letters of administration, (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased, otherwise to shew good and sufficient cause, concludent in law, why such letters

of administration should not be committed and granted to the said Thomas Wargent, Eleanor Young, and Catherine Newman, as three of the residuary legatees named therein; or in case the said original will shall not be brought into the said registry, to accept or refuse probate of the aforesaid copy thereof, or letters of administration, with the same annexed, of all and singular the goods, chattels, and credits of the said deceased, limited until the original will, or a more authentic copy thereof, shall be brought into and left in the registry of our said court, otherwise to shew good and sufficient cause, concludent in law, why letters of administration (with the said copy of the said will annexed,) under the limitations aforesaid, should not be committed and granted to the said Thomas Wargent, Eleanor Young, and Catherine Newman, three of the residuary legatees named in the said will, as aforesaid; and further to do and receive, as unto law and justice shall appertain. And, moreover, that you cite, or cause to be cited, the said Samuel Wargent, Richard Hollings, Joseph Abell, Mary Wargent, Elizabeth Gammond, and Catherine Hollings to appear on the day, at the time and place, and in manner aforesaid, and also on every other court-day, then and there to see and hear all and every the judicial acts, matters, and things needful, and by law required to be done and expedited, in and about the premises until a definitive sentence in writing shall be read, signed, promulged, and given; or until a final interlocutory decree shall be made and interposed in the cause or business, if they, or either of them, shall think it for their interest so to do, at the promotion of the said Thomas Wargent, &c. And you shall, moreover,

intimate, &c. Our master, &c., will proceed, &c., to read, &c., a definitive sentence, &c.; and what, &c.

Given at London, this 13th day of January, A.D. 1831, &c.

The other decree, to which I alluded, is resorted to after probate in common form has passed to the executor. It is a process, compulsory on such executor, to bring the probate into court, and prove the will in solemn form. It originates with the next of kin of the deceased, or with the executors or other persons interested in another will.

### *Decree.*

Decree, at the instance of next of kin, against an executor to bring in probate, &c.

William, by Divine Providence Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting:

Whereas the Worshipful A. B., Doctor of Laws, surrogate of the Right Honourable Sir Herbert Jenner Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding, hath at the petition of the proctor of James Holmes, alleging that Richard Holmes, late of George's Place, Holloway, in the county of Middlesex, deceased, died on the 17th day of September, 1836, a widower and intestate, having whilst living, and at the time of his death, goods, chattels, and credits in diver dioceses and jurisdictions, sufficient to found the jurisdiction of our said Preroga-



tive Court, and that he, the said James Holmes, is one of the natural and lawful children of the said deceased; and further alleging that notwithstanding the premises, probate of a pretended will of the said deceased, bearing date on or about the 23rd day of June, 1836, passed, granted under the seal of our said Prerogative Court to Martha Pretty, wife of Francis Pretty, the sister of the said deceased, the sole executrix, as pretended therein named, (as by the acts and records of our said Prerogative Court, reference being thereunto had, will more fully appear,) decreed the said Martha Pretty, (wife of Francis Pretty,) to be cited and called to appear in judgment, on the day and the time and place, to the effect, and in manner and form hereinafter mentioned, justice so requiring. We do, therefore, hereby authorize, empower, and strict enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Martha Pretty, by shewing to her this original, under seal, and leaving with her a true copy hereof, to appear personally, or by her proctor duly constituted, before our master, keeper, or commissary aforesaid, his surrogate or some other competent judge in this behalf, in the Common Hall of Doctors' Common, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature, there, on the sixth day after service of these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said court, otherwise on the general session, bye-day, caveat-day, or additional court-day then next ensuing, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to bring into and leave in the registry of our said court, the pro-

bate of the said pretended will, so granted to her aforesaid, and prove the said pretended will, in solemn form of law, by good and sufficient witnesses, otherwise to shew good and sufficient cause, if she hath or knows any, why the said pretended will should not be pronounced to be null and invalid, and why the said probate thereof should not be revoked and declared null and void to all intents and purposes in the law whatsoever, as having been unduly obtained, and the said deceased pronounced to have died intestate; and why letters of administration of all and singular the goods, chattels, and credits of the said deceased, as dying a widower and intestate, should not be committed and granted to the said James Holmes, as one of the natural and lawful children of the said deceased, and also by virtue of her corporal oath to exhibit a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which since his death have come to the hands, possession, or knowledge of her, the said Martha Pretty, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said James Holmes; and what you shall do, or cause to be done in the premises you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, this                      day of                      ,  
in the year of our Lord 18                      , and in the  
year of our translation.

*Decree.*

William, by Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting:

Decree, at the instance of next of kin, against executors to bring in probate, &c.

Whereas the Worshipful Joseph Phillimore, Doctor of Laws, and Surrogate of the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding, hath, at the petition of the proctor of Catherine Mary Tavener, (wife of Henry Robert Tavener,) alleging that John Stracey, late of Balsham, in the county of Cambridge, Gentleman, deceased, (having whilst living, and at the time of his death, goods, chattels, and credits, in divers dioceses, or peculiar jurisdiction, sufficient to found the jurisdiction of our said Prerogative Court of Canterbury,) departed this life on or about the 31st day of July, one thousand eight hundred and thirty-nine, a bachelor, without parent, brother, sister, uncle, aunt, nephew, niece, or cousin german, having as pretended, made and executed his last will and testament in writing, bearing date the twenty-ninth day of May, one thousand eight hundred and thirty-nine, and thereof appointed William Jackson, Lyon Falkoner, (in the will written Falkner,) and Joseph Tredgett, executors and universal legatees, who, on or about the fifteenth day of August, one thousand eight hundred and thirty-nine, did unduly obtain probate of the said pretended will to be granted to them by the authority

and under the seal of our said court, (as by the acts and records thereof, reference being thereto had will appear,) and lastly alleging that the said Katherine Mary Tavenor is the lawful cousin german, once removed, and next of kin of the said deceased, decreed the said William Jackson, Lyon Falkoner, and Joseph Tredgett to be cited and called to appear in judgment on the day, at the time and place, and to the effect and in manner and form hereinafter mentioned, (justice so requiring.) We do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause to be cited, the said William Jackson, Lyon Falkoner, and Joseph Tredgett, to appear before our master, keeper, or commissary aforesaid, his surrogate, or other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, personally or by his or their proctor or proctors duly constituted, on the sixth day after they shall have been served with these presents, if it be a general session, bye-day, caveat-day, or additional court-day, of our said Prerogative Court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court, then next following, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to bring into and leave in the registry of our said court, the probate of the said pretended last will and testament of the said deceased, heretofore granted and committed to them as aforesaid, and to prove the same in solemn form of law, by good and sufficient witnesses, if they or either of them should think it their interest so to do, or

to shew cause if they have or know any, why the said probate should not be revoked and declared null and void, and the said pretended will pronounced null and invalid to all intents and purposes in the law whatsoever; and why letters of administration of all and singular the goods, chattels, and credits of the said deceased, as having died intestate, should not be committed and granted to the said Katherine Mary Taverer, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Katherine Mary Taverer. And what you shall do, or cause to be done in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge on this behalf, together with these presents.

Dated at London, the fifth day of April, in the year of our Lord one thousand eight hundred and forty-three, and in the fifteenth year of our translation.

### *Decree.*

William, by Divine Providence Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting:

Whereas it hath been alleged before the Worshipful  
 , Doctor of Laws, and Surrogate of the  
 Right Honourable Sir Herbert Jenner, Knight, Doctor  
 of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, by  
 and on the part and behalf of William Jones, that

Decree  
 against executor to  
 bring in probate, &c., at  
 the instance  
 of the executor of another will.

Thomas Davis, late of Rochester, in the county of Kent, Esquire, deceased, departed this life on or about the second day of August, 1832, having, whilst living, and at the time of his death, goods, chattels, and credits in divers dioceses or peculiar jurisdictions, sufficient to found the jurisdiction of our Prerogative Court of Canterbury, and having made and duly executed his last will and testament in writing, bearing date the 15th day of May, in the year 1830, and thereof appointed the said William Jones sole executor: that, notwithstanding the premises, a probate of a pretended will of the said deceased, bearing date the 21st day of July, 1832, was, on the 22nd day of August, in the said year 1832, granted, under seal of our said Prerogative Court, to Mary Davis, spinster, the sister of the said deceased, and John Evans, the executors, as pretended, named in the said pretended will: and whereas the said surrogate, rightly and duly proceeding in the premises, did, at the petition of the proctor of the said William Jones, decree the said Mary Davis, spinster, and John Evans to be cited and called to appear in judgment on the day and at the time and place, to the effect, and in manner and form following, justice so requiring: we do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Mary Davis and John Evans, by shewing to them, and each of them, these presents under seal, and leaving with them, and each of them, a true copy hereof, to appear personally, or by their proctor or proctors duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Com-

mons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after service of these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten o'clock in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to bring into and leave in the registry of our said court the said probate of the said pretended will of the said deceased, bearing date the 21st day of July, 1832, granted to them as aforesaid, or shew cause, if they have or know any, why the said probate should not be revoked and declared null and void, and the said pretended will pronounced null and invalid to all intents and purposes in the law whatsoever; and probate of the aforesaid true and original last will and testament of the said deceased, bearing date the 15th day of May, 1830, be committed and granted to the said William Jones, the sole executor therein named as aforesaid, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said William Jones, the executor aforesaid; and what you shall do or cause to be done in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf.

Dated at London, the                      day of                      ,  
in the year of our Lord 18    , and in the  
year of our translation.

*Decree.*

Decree to  
bring in let-  
ters of admi-  
nistration  
with one tes-  
tamentary  
paper an-  
nexed, and  
shew cause  
why probate  
of that and  
another tes-  
tamentary  
paper should  
not be granted  
to the execu-  
tors therein  
named.

William, by Divine Providence Archbishop of Canter-  
bury, Primate of all England, and Metropolitan,  
to all and singular clerks and literate persons,  
whomsoever and wheresoever, in and throughout  
our whole province of Canterbury, greeting:

Whereas the Worshipful Jesse Addams, Doctor of  
Laws, and Surrogate of the Right Honourable Sir  
Herbert Jenner, Knight, Doctor of Laws, Master,  
Keeper, or Commissary of our Prerogative Court of  
Canterbury, lawfully constituted, rightly and duly pro-  
ceeding, hath, at the petition of the proctor of Charles  
Henfrey, alleging that Henry Henfrey, formerly of  
Foundling Terrace, Gray's Inn Road, in the county of  
Middlesex, but lately of Havre, in France, Gentleman,  
deceased, (having, whilst living, and at the time of his  
death, goods, chattels, and credits in divers dioceses or  
jurisdictions within the province of Canterbury, suffi-  
cient to found the jurisdiction of our said Prerogative  
Court,) departed this life on the twenty-seventh day of  
February, one thousand eight hundred and thirty-nine,  
having, whilst living, duly made and executed his last  
will and testament in writing, the same being contained  
in two certain testamentary paper writings, bearing date  
respectively, the fourteenth day of July, one thousand  
eight hundred and thirty-eight, and the twenty-sixth  
day of February, one thousand eight hundred and  
thirty-nine, and thereof appointed Charles Henfrey, his  
said party, and Charles Marston Stretton, executors;  
and further alleging that, notwithstanding the premises,  
Mary Ann Henfrey, widow, the relict of the said de-



ceased, on or about the eighth day of November, one thousand eight hundred and thirty-nine, unduly applied for and obtained letters of administration, (with the latter of the said testamentary paper writings only, to wit, that bearing date the twenty-sixth day of February, one thousand eight hundred and thirty-nine, annexed,) to be committed and granted to her by the authority of our said Prerogative Court; decreed the said Mary Ann Henfrey, widow, to be cited and called to appear in judgment on the day, at the time and place, in the manner, and to the effect hereinafter mentioned, justice so requiring. We do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Mary Ann Henfrey, widow, by shewing to her this original, under seal, and by leaving with her a true copy hereof, to appear personally, or by her proctor duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after she shall have been served herewith, if it be a general session, bye-day, caveat-day, or additional court-day of our said Prerogative Court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the said court, then and there to bring into and leave in the registry of our said court the letters of administration (with the aforesaid testamentary paper writing, bearing date the twenty-sixth day of February, one thousand

eight hundred and thirty-nine annexed,) so committed and granted to her by the authority of our said court, on or about the eighth day of the month of November last, as aforesaid, and shew cause why the same should not be revoked and declared null and void to all intents and purposes in the law, and why probate of the said two testamentary paper writings, bearing date respectively as aforesaid, the fourteenth day of July, one thousand eight hundred and thirty-eight, and the twenty-sixth day of February, one thousand eight hundred and thirty-nine, as together containing the last will and testament of the said deceased, should not be committed and granted to Charles Henfrey and Charles Marston Stretton, the executors therein named. And further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of Charles Henfrey, one of the executors aforesaid. And what you shall do or cause to be done in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, this twentieth day of February, one thousand eight hundred and \_\_\_\_\_, in the twelfth year of our translation.

An analogous process is that which issues at the suit of an executor, or party interested under a will, against the administrator to bring in his letters of administration, and shew cause why they should not be revoked and probate granted of the will.

There is another process, issuing at the instance of the legatees of a codicil, against an executor, who, in

taking probate of his testator's will, has declined to include such codicil. The decree in this case calls upon the executor to take probate of it, in addition to the will, and is as follows; viz. :—

*Decree.*

William, by Divine Providence Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting :

Whereas the Worshipful Jesse Addams, Doctor of Laws, Surrogate of the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding, hath, at the petition of the proctor of John Jones, alleging that Thomas Evans, late of Hornsey, in the county of Middlesex, deceased, departed this life on the 7th day of June, in the year 1839, having whilst living, and at the time of his death, goods, chattels, or credits in divers dioceses or peculiar jurisdictions, within our province of Canterbury, sufficient to found the jurisdiction of our said court, and having, whilst of sound mind, memory, and understanding, duly made and executed his last will and testament in writing, bearing date the 15th day of October, 1830, and therein nominated and appointed Henry Davis, Esquire, sole executor, who, on the twenty-seventh day of the said month of October, duly proved the said will in our said court, (as in and by the acts and records of our said court, reference being thereunto had will appear;) and further alleging,

Decree  
against an  
executor to  
take probate  
of a codicil,  
at the in-  
stance of a  
legatee  
named  
therein.

that the said testator, also whilst of sound mind, memory, and understanding, to wit, on the 6th day of July, 1838, duly made and executed a codicil to his said will in the words following, to wit: "I do hereby, &c. &c.;" and which said codicil has been exhibited and brought into, and left in the registry of our said Prerogative Court of Canterbury; and further alleging, that the said Henry Davis hath declined and refused to take upon him the probate and execution of the said codicil: hath decreed the said Henry Davis to be cited and called into judgment to the effect and in manner and form hereinafter mentioned, justice so requiring. We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Henry Davis, by shewing to him these original presents under seal, and by leaving with him a true copy hereof, to appear personally, or by his proctor lawfully constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons," situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after service of these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said Prerogative Court, otherwise on the general session, bye-day, caveat-day, or additional court-day, then next ensuing, at the hour of ten in the forenoon of the same day, and there to abide, if occasion require, during the sitting of our said court, then and there to take upon himself the probate and execution of the said codicil to the said will of the said deceased, or shew good and sufficient

cause, concludent in law, to the contrary. And further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said John Jones; and what you shall do or cause to be done in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or any other competent judge in this behalf, together with these presents.

Dated at London, this       day of       , in the year of our Lord       , and in the       year of our translation.

The decree having been duly served is returnable into court on the general session, bye-day, caveat-day, or additional court-day, immediately succeeding the time therein mentioned. But to entitle the promoter's proctor to do this act on his behalf, the former must execute a proxy of nomination in favour of the other, authorizing him to conduct the suit, in his name, as his legal representative. This instrument is required to secure the adverse party, and to protect the proctor(a).

The proxy of a promoter who has extracted the decree first given, viz., of an executor who seeks to propound a will of his own accord against the next of kin of a testator, is as follows:—

### *Proxy of Executor, propounding Will.*

Whereas a decree hath issued under seal of the Prerogative Court of Canterbury, at the instance of me, the undersigned Boyd Miller, the sole executor named

Proxy of executor to propound a will.

(a) Prankard v. Deacle, Hagg. R. 1, p. 186.

in the true and original last will and testament of Patrick Hart, late of \_\_\_\_\_, in the county of \_\_\_\_\_, Esquire, deceased, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, calling on Thomas Hart and Jane Hart, spinster, the natural and lawful brother and sister, and only next of kin, and the only persons who would have been entitled in the distribution of the personal estate and effects of the said deceased, in case he had died intestate, to see and hear all and every the judicial acts, matters, and things needful and by law required to be done and expedited in and about the said will until a definitive sentence in writing should be read, signed, promulged, and given, or until a final interlocutory decree should be made and interposed, concerning the same. And whereas the said decree hath been duly and personally served on the said Thomas Hart and Jane Hart respectively; now know all men by these presents that I, the said Boyd Miller, for divers good causes and considerations me thereunto especially moving, have nominated, constituted, and appointed Felix Slade, Notary Public, one of the procurators-general of the Arches Court of Canterbury, to be my true and lawful proctor, for me and in my name to appear before the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, lawfully constituted, his surrogate, or some other competent judge in this behalf, and exhibit this, my special proxy, and by virtue thereof to return the said decree into court, and in my name, and on my part and behalf, to propound the said will, bearing date as aforesaid, and take such further steps as shall be necessary towards procuring a definitive sentence or final decree

to be given and promulged, or interposed and made, for and in favour of the force and validity of the said will, and probate thereof to be granted to me as such executor as aforesaid, under seal of the said court, and generally to do, perform, and execute all such other acts, matters, and things as shall be requisite and necessary to be done for me and in my name herein; and to abide for me in judgment until a definitive sentence or final decree shall be given and promulged, or interposed and made in the premises; with full power to the said Felix Slade, my proctor aforesaid, one or more other proctor or proctors, or other fit and competent person or persons, to make, name, substitute, and appoint, and the same to revoke; hereby ratifying, allowing, and confirming all and whatsoever my said proctor, or his substitute or substitutes, shall lawfully do or cause to be done for me and in my name, in and about the premises. In witness whereof I have hereunto set my hand and seal this                      day of                      , in the year                      .

BOYD MILLER. (LS.)

Scaled and delivered in the presence of us—

A. B. of \_\_\_\_\_

C. D. of \_\_\_\_\_

The proxy given by the next of kin, on the adverse side, authorizing an appearance and opposition of the will, is as follows:—

*Proxy of next of Kin, opposing Will.*

Whereas a decree, &c. (as in the former proxy.)  
Now know all men, by these presents, that I, the said

Proxy of  
next of kin  
to oppose  
will.

Thomas Hart, for divers good causes, &c., have nominated &c., Richard Addams, junior, one of the procurators general exercent in the Arches Court of Canterbury, to be my lawful proctor, for me, and in my name to appear before the Right Honourable Sir Herbert Jenner, Knight, &c., and exhibit this my special proxy, and by virtue thereof to give an appearance to the said decree in my name, and on my behalf, and in case the said pretended will, bearing date as aforesaid, shall be propounded, then to oppose the same, and oblige the said Boyd Miller to prove the said will, in solemn form of law, by good and sufficient witnesses, and to take such further steps as shall be necessary on my part and behalf towards procuring a definitive sentence or final decree, to be given and promulged, or interposed and made against the force and validity of the said pretended will, and the said deceased to be pronounced to have died intestate, and a widower without child or parent, and also to pray and procure letters of administration of all and singular the goods, chattels, and credits of the said deceased, as so dying intestate, to be committed and granted under seal of the said Prerogative Court, to me, the said Thomas Hart, the natural and lawful brother, and one of the next of kin of the said deceased; and generally, &c. &c.

The proxy of the promoter, or next of kin, who has taken out a decree calling in a probate granted to an executor in common form, is as follows:—

*Proxy of next of Kin calling in Probate.*

Proxy of next  
of kin calling  
in probate.

Whereas a decree, &c. Now know all men, &c., to return the said decree into court, and procure an ap-



pearance to be given thereto, by or on the part of the said Martha Pretty, wife of Francis Pretty, the pretended executrix as aforesaid, and the said probate of the said pretended will, bearing date as aforesaid, to be brought into and left in the registry of the said court, and in case the said pretended will shall be propounded, then to oblige her the said Martha Pretty to prove the same in solemn form of law, by good and sufficient witnesses, and to take such further steps as shall be necessary on my part and behalf towards procuring a definitive sentence, or final decree to be given and promulged, or interposed and made against the force and validity of the said pretended will; and also to pray and procure the said probate thereof to be revoked and declared null and void, to all intents and purposes in the law whatsoever, and letters of administration of all and singular the goods, chattels, and credits of the said deceased, as dying a widower, without child or parent, and intestate, to be committed and granted to me as the natural and lawful brother and one of the next of kin of the said deceased, and also an inventory to be exhibited by her, upon and by virtue of her corporal oath, of all and singular the goods, chattels, and credits of the said deceased, which at any time since his death have come to the hands, possession, or knowledge of her, the said Martha Pretty; and generally, &c. &c.

The proxy of the defendant, or party cited, *i. e.* the executor, is as follows:—

*Proxy of Executor, bringing in Probate and propounding Will.*

Whereas a decree, &c. Now know all men, &c., for me, and in my name to appear to the said decree, and in

Proxy of  
executor to

bring in probate and propound will.

obedience thereto to exhibit, bring into, and leave in the registry of the said Prerogative Court of Canterbury, the said probate so granted to me as aforesaid, and to propound the said will of the said deceased, bearing date as aforesaid, and in case the same is opposed, then to prove the same in solemn form of law, by good and sufficient witnesses, and take such further steps as shall be necessary towards procuring a definitive sentence or final decree to be given and promulged, or made and interposed for and in favour of the force and validity of the said will, and the probate thereof, heretofore granted to me to be confirmed, and delivered out of the registry to me, or to him on my behalf, and me to be dismissed from the said decree, and all further observance of justice in respect thereof; and generally, &c.

In those cases where the proceeding has been commenced by the next of kin, entering a caveat against a grant of probate passing to the executor, the proxy of the latter is nearly the same in form with those already given, except that it will also contain an authority to his proctor, either "to admit the interest of A. B. as such natural and lawful brother, (or other relative,) and next of kin," or "to deny the interest of A. B. &c. and in case the same shall be propounded, then to oppose the same, &c."

The proxy of the next of kin, or caveator, is the same as any other proxy already given, as from a next of kin, except that it also contains a clause relative to the question of interest, viz. "and in case my interest shall be denied, then to propound the same, and oppose the said will, &c."

On the day fixed for the return of the decree, and the appearance of the party or parties cited, the promoter's

proctor will bring the process into court, and if no appearance be then given on behalf of the defendant, the judge or surrogate will continue the certificate of the execution of the decree to the next court, *i. e.* will enlarge the time of appearance for that period. If no act is required of the party cited, the certificate of the mandate is kept open till the sentence of the court is finally given, the whole proceedings going on behind his back, or in *pœnam contumaciæ*, for it is not usual to signify and attach a defendant in these cases, as no advantage can result therefrom to the other party. If however an inventory is called for, or a previous grant of administration or probate is sought to be lodged in court, and, notwithstanding this, an appearance is declined by the party cited, it then becomes necessary to proceed to a *significavit*, as a consequence of which the contumacious party is attached until obedience. It is my intention to treat only of those proceedings where an appearance is given of all parties interested, and the question is contested in regular form.

The proctor for the next of kin having given an appearance and exhibited a proxy from his party or parties, and the executor having admitted his client's interest as such, the judge makes an assignation on both proctors to bring in affidavits of scripts of their respective parties, *i. e.* to file a statement on oath of all testamentary documents or memoranda, of whatever date, (including drafts and instructions for wills or codicils of the deceased,) which have at any time come to their possession or knowledge(*b*).

(*b*) No papers of a testamentary nature can be withheld. Langmead v. Lewis, Phill. R. 2, p. 326.

These are annexed to the affidavits as otherwise accounted for.

Should one party aver in his affidavit, either from personal knowledge or information and belief, that the other party has or formerly had in his possession or custody, a script, which he has not produced, or the absence of which he has not explained, the court will at the prayer of the proctor of the former, assign the other party to bring in a further and fuller affidavit of scripts, and in case of laches, will decree a monition against him to the same effect. (c)

If the interest of the party asserting himself to be next of kin is denied by the executor, the suit then, for a time, assumes a different form.

The next of kin, by the denial, is compelled to propound his interest in a preliminary suit of exactly the same nature as that which is termed an interest cause. And the interest of the next of kin being ultimately proved he is admitted by the court a contradictor to the will, and the testamentary or principal suit thenceforward goes on in the same manner as if the interest of the party had been originally confessed by the executor.

If the next of kin is also a legatee under the will which he puts in suit, and has received the amount of such legacy, although legally admissible as a contradictor, he must bring in his legacy with all interest accrued upon it, before proceeding in the cause (d).

(c) Feetham v. Smith, Prer. Ct. of Cant. 1 sess. Mich. Term, 1842.

(d) Bell v. Armstrong, Add. R. vol 1, p. 374, and cases cited in note. Braham v. Burchell, Add. R. vol, 3, p. 256.

The affidavit as to scripts, of the executor, is in the following form:—

*Affidavit of Scripts of Executor.*

C. D. *against* E. F.

Affidavit of  
scripts of  
executor.

In the goods of A. B., deceased.

Appeared personally C. D., of \_\_\_\_\_, in the county of \_\_\_\_\_, Gentleman, party in this cause, and the sole executor named in the last will and testament of the said A. B., late of \_\_\_\_\_, in the county of \_\_\_\_\_, Esquire, deceased, and made oath that no script or scroll, paper or parchment-writing, being or purporting to be, or having the face, force, form, or effect of a will or codicil, or other testamentary of the said deceased, at any time, either before or since his death hath come to the hands, possession, or knowledge of this deponent, save and except the true and original last will and testament of the said deceased, now hereunto annexed, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, and wherein this deponent is named and appointed sole executor and residuary legatee.

(Signed) C. D.

On the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, the said C. D. was duly sworn to the truth of this affidavit, before me

H. I., Surrogate.

Present,

RICHARD ADDAMS, Notary Public.

The affidavit of scripts of the next of kin, setting up an intestacy, is in the following form:—

*Affidavit of Scripts of next of Kin.*

Affidavit of  
scripts of  
next of kin.

C. D. *against* E. F.

In the goods of A. B., deceased.

Appeared personally E. F., of \_\_\_\_\_, in the county of \_\_\_\_\_, widow, one of the parties in this cause, and made oath that no script, scroll, paper, parchment, or other writing, being, or purporting to be, or having the face, force, form, or effect of a will or codicil, or other testamentary disposition of the said A. B., late of \_\_\_\_\_, in the county of \_\_\_\_\_, Esquire, deceased, at any time, either before or since his death, have come to the hands, possession, or knowledge of this deponent, save and except the pretended last will and testament of the said deceased, bearing date, as pretended, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, and wherein C. D., the other party in this cause, is appointed sole executor and residuary legatee.

(Signed) E. F.

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 18\_\_\_\_, the said E. F. was duly sworn to the truth of the foregoing affidavit, by virtue of the annexed commission, by me,

H. I., Rector of the parish  
of \_\_\_\_\_ aforesaid, and Commissioner.

In the presence of

L. M., of \_\_\_\_\_, Solicitor.  
N. O., of \_\_\_\_\_, Gentleman.

These affidavits, it will be observed, are sworn either before a surrogate of the court, or a clergyman acting

under a special commission issued for that purpose, which is directed to the officiating minister of the parish in which the deponent resides.

On the next court-day after the assignation, the affidavits and scripts are brought in, and the commissions, if any, returned. If it appears from the affidavit of either party that any testamentary schedule or instrument of the deceased is in the hands of a person who declines to deliver it up without the order or guarantee of the court, the proctor for such party applies to the court, and a monition to that effect is then decreed against the person withholding the document.

The monition is in the following form, viz.:—

*Monition to bring in a Script.*

William, by Divine Providence, &c.

Whereas the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding in a certain cause or business of proving by witnesses, in solemn form of law, the pretended last will and testament of A. B., late of \_\_\_\_\_, deceased, bearing date on \_\_\_\_\_, promoted by C. D., the pretended executor named in the said will, against E. F., the sole executor named in the true and original last will and testament of the said deceased, bearing date on \_\_\_\_\_

\_\_\_\_\_, hath, at the petition of the proctor of the said E. F., alleging that it appears by the affidavit of his said party as to scripts, by him made and sworn on or about \_\_\_\_\_, and now remaining in the registry

Monition to  
bring in a  
script.

of our said court, that a certain original testamentary script, being or purporting to be the draft of the said pretended will of the said deceased, bearing date as aforesaid, is now in the possession of G. H., of

, Solicitor, decreed the said G. H. to be monished and cited to appear on the day, at the time and place, and to the effect hereinafter mentioned, justice so requiring: we do therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish and cite, or cause to be monished and cited, the said G. H. by shewing, &c., to appear personally, or by his proctor duly constituted, before the said Sir Herbert Jenner, Knight, Doctor of Laws, the judge aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, &c., on the sixth day after the service of these presents, if it shall be a general session, &c., then and there to exhibit, bring into, and leave in the registry of our said court the said original draft will of the said deceased, and also all other original testamentary papers or scripts of the said deceased now in the possession of him the said G. H.; and further to do and receive, &c.

This monition is served and returned into court in the same manner as a decree. The party monished, or his proctor, in obedience to the mandate, brings in the testamentary papers required of him, annexed to an affidavit in verification (e). No proxy is exhibited by his proctor, and he is usually dismissed on the next

(e) This affidavit, however, of the mandate not being allowed cannot be compelled, the terms to extend to an oath.



court-day, by the consent of the parties in the cause, unless it should appear that any document, purporting to be under the hand of the testator, is still withheld by him.

The scripts having been filed in the manner I have just mentioned, the proctor for the next of kin, or contradictor, declares he opposes the will or testamentary disposition in question, whereupon the proctor for the executor propounds the same in acts of court, and files an allegation in support thereof.

Before the executor propounds the will, he may, at this stage of the proceedings, *ex abundanti cautela*, and in order to guard against the possibility of any other next of kin than those who have already appeared in the suit, attempting to contest the instrument at a future period, on the ground of not having been parties to the suit, extract a decree to see proceedings, *i. e.* to see the will propounded, and the usual ensuing steps taken in regard thereto, against the other next of kin.

If the executor has already propounded the paper against the opponent who has appeared in the cause, he must, notwithstanding, on the return of a decree of this kind against the other next of kin, whether an appearance is given on behalf of them or not, repropound the document in the same manner as before. If all the parties cited to see proceedings do not appear, the suit is conducted *in pœnam* against the absent.

The decree is as follows:—

*Decree to see Proceedings against other next of Kin.*

Decree to  
see proceed-  
ings against  
other next of  
kin.

William, by Divine Providence, &c.

Whereas there is now depending in judgment before the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, a certain cause or business of proving in solemn form law, the last will and testament (as contained in two paper writings, marked A and B) of James Wood, late of the city of Gloucester, Esquire, deceased, (the said paper writings bearing date respectively the second and third days of December, in the year of our Lord one thousand eight hundred and thirty-four,) and of granting a probate thereof to Matthew Wood, Esquire, John Chadborn, Jacob Osborne, and John Surman Surman, the executors therein named, which said cause is promoted and brought by the said Matthew Wood, John Chadborn, Jacob Osborne, and John Surman Surman, against Elizabeth Goodlake, widow, the lawful second cousin of the said deceased; and whereas the said deceased departed this life a bachelor, without a parent, brother or sister, uncle or aunt, nephew or niece, cousin-german or cousin-german once removed, but leaving behind him the said Elizabeth Goodlake, his lawful second cousin, and only known next of kin, and as such the sole person entitled to the personal estate and effects of the said deceased, in case he should be pronounced to have died intestate, (as in and by an affidavit duly made and sworn to by William Reed King, of Serjeant's Inn, in the city of London, Solicitor, and now remaining in the registry of our said

court, will more fully and at large appear;) and whereas it hath been alleged, before the Right Honourable the Judge aforesaid, that it is necessary in the premises to cite, or cause to be cited, all other the next of kin (if any) of the said deceased in special, and all persons in general, having or pretending to have any right, title, claim, or interest in or to the goods, chattels, and credits of the said deceased, to the effect hereinafter mentioned; and whereas the Right Honourable the Judge aforesaid, rightly and duly proceeding, did, at the petition of the proctor of the said Matthew Wood, John Chadborn, Jacob Osborn, and John Surman Surman, decree all other the next of kin, if any, of the said deceased in special, and all persons in general, having or pretending to have any right, title, claim, or interest in or to the goods, chattels, and credits of the said deceased, to be cited, intimated, and called to appear in judgment on the day, at the time and place, in manner and form and to the effect hereinafter mentioned, justice so requiring; we do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, all other the next of kin, if any, of the said deceased in special and all persons in general having or pretending to have any right, title, claim, or interest in or to the goods, chattels, and credits of the said deceased by publicly affixing up these presents for some time in the Royal Exchange, in the city of London, during the usual time of merchants resorting thither, and by affixing, and leaving thereon affixed, a true copy hereof, that they or any of them do appear personally, or by their proctor or proctors lawfully constituted, before our master, keeper, or commissary aforesaid, or

before his surrogate or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the thirtieth day after service hereof, in manner aforesaid, if it shall be a general session, bye-day, caveat-day, or additional court-day of our said court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten in the forenoon, and there to abide if occasion require, during the sitting of the said court, and also on every other court-day, then and there to see and hear all and every the judicial acts, matters, and things needful, and by law required to be done and expedited in and about the premises, until a definitive sentence in writing shall be read, signed, promulged, and given, or until a final interlocutory decree shall be made and interposed in the said cause or business, if they, or any or either of them, shall think it for his, her, or their interest so to do, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Matthew Wood, John Chadborn, Jacob Osborn, and John Surman Surman; and moreover that you intimate, or cause it to be intimated unto all other the next of kin, if any, of the said deceased; and all persons in general having or pretending to have any right, title, claim, or interest in or to the aforesaid goods, chattels, and credits of the said testator, (and to whom respectively we do also intimate by the tenor of these presents,) that if he, she, or they, or some or one of them, do or does not appear on the several days, and at the time and place and to the effect and in manner

and form as hereinbefore is mentioned; or appearing, do or does not shew good and sufficient cause, concludent in law, to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed, and will proceed to do all and every the judicial acts, matters, and things needful, and by law required to be done and expedited in and about the premises, and to the reading, signing, promulging, and giving a definitive sentence in writing, or to the making and interposing a final interlocutory decree in the said cause or business, the absence or rather contumacy of all other the next of kin, if any, of the said deceased, and all persons in general having or pretending to have any right, title, claim or interest in or to the goods, chattels, and credits of the said deceased so cited and intimated as aforesaid, in any wise notwithstanding, and what you shall do or cause to be done in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Given at London, under seal of our said Prerogative Court of Canterbury, the fourteenth day of June, in the year of our Lord one thousand eight hundred and thirty-six, and in the eighth year of our translation.

In the like manner, in order to conclude the legatees or the court from re-opening the question, after a decision has been given against the will, on the allegation that the executor who propounded it in the first instance had colluded with the next of kin to procure such unfavourable result, the next of kin have been allowed to

issue a decree against the legatees to appear and see proceedings in the cause, notwithstanding that, as a general rule, the acts of the executor are considered binding on all persons concerned therein (g) ; and generally a next of kin is entitled to take such a step to legally clear off the existence of an outstanding will, which he presumes to be invalid. The decree is in the following terms :—

*Decree to propound Will and see Proceedings.*

Decree to propound will, at the instance of next of kin, against the legatees therein named.

William, &c.

Whereas the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding in a certain cause or business, now depending before him in judgment, of granting letters of administration of all and singular the goods, chattels, and credits of Robert Pearn, late of No. 1, Granby Terrace, New Cross Road, in the parish of Saint Paul, Deptford, in the county of Kent, deceased, promoted by Allnet, otherwise Alnet Prin, the lawful cousin german once removed, and one of the next of kin of the said deceased, against John Abraham Bassett, the pretended cousin german twice removed, of the said deceased, at the petition of the proctor of the said Allnet, otherwise Alnet Prin, alleging that the said deceased departed this life on or about the first day of October, 1842, (having, &c.,) a bachelor without parent, brother or sister, uncle or

(g) Colvin v. Fraser, Hagg. R. 1, p. 107.

aunt, nephew or niece, or cousin german, and intestate, leaving behind him the said Allnet, otherwise Alnet Prin, his lawful cousin german once removed, and one of his next of kin; and further alleging that a pretended will of the said deceased, bearing date the second day of June, 1831, hath been brought into the registry of our said court annexed to an affidavit of William Harrison, Esquire, the Reverend Richard Bathurst Greenlaw, Clerk, and Edward Hobson Vitruvius Laws, Serjeant-at-Law, whereby, as pretended, the said deceased bequeathed to his cousin, Edward Porter, or to his descendants, the residue of his property; and did also, as pretended, name the said John Abraham Bassett, and also Elizabeth Bassett, Joseph Bassett, and William Bassett, legatees in the sum of £100 each, but did not therein name any executor, and that the said Edward Porter is since deceased, and Eliza Porter, spinster, and Mary Thompson, (wife of Peter Thompson,) formerly Porter, spinster, are the natural and lawful children of the said Edward Porter, deceased, and as such the residuary legatees, as pretended in the said pretended will named; hath decreed the said Eliza Porter, spinster, and Mary Thompson, (wife of Peter Thompson,) and Elizabeth Bassett, Joseph Bassett, and William Bassett, to be cited, intimated, and called to appear in judgment on the days, at the time and place, and to the effect and purpose hereinafter mentioned, justice so requiring;) we do, therefore, &c., to cite, or cause to be cited, the said, &c., to appear on the fourth session of this present Trinity Term, &c., then and there to propound the said pretended will, and also to see and hear all and every the judicial acts, matters, and things needful, and by law required to be done and

expedited in and about the premises, until a definitive sentence in writing, &c.; and that you do moreover intimate, &c.

Dated at London, the 8th day of May, 1843, &c.

And where there is only one legatee who sustains a codicil opposed by the executors of the will, the latter, with a similar intention, as in the case just mentioned, of concluding the other legatees, may extract a decree against all the legatees named in such codicil to appear and propound it, with an intimation that in their absence the judge will proceed to the completion of all necessary legal acts in relation thereto.

The last-mentioned decree is as follows :—

*Decree to propound a Codicil and see Proceedings.*

Decree to propound a codicil against the legatees therein named, at the instance of the executors named in the will.

William, &c. To all and singular, &c., greeting :

Whereas there is now depending in judgment before the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, a certain cause or business of proving, in solemn form of law, by good and sufficient witnesses, the last will and testament, as contained in two paper writings marked A and B, of James Wood, late of the city of Gloucester, Esquire, deceased, bearing date respectively the second and third days of December, in the year of our Lord one thousand eight hundred and thirty-four, promoted by Matthew Wood, Esquire, John Chadborn, Jacob Osborne, and John Surman Surman, the executors therein named, against Elizabeth Goodlake, widow,



the second cousin, and only next of kin of the said deceased; and whereas in the progress of the said cause there hath been brought into the registry of our said court, a certain pretended paper writing, purporting to be a codicil to the last will and testament of the said deceased, and which said paper writing is in the words or to the tenor following, to wit: "In a codicil to my will, I gave the Corporation of Gloucester £140,000; in this I wish my executors would give £60,000 more to them for the same purpose as I have before named. I would also give to my friends, Mr. Philpotts £50,000, and Mr. George Council £10,000, and to Mr. Thomas Helps, Cheapside, London, £30,000, and Mrs. Goodlake, mother of Mr. Surman, and to Thomas Wood, Smith Street, Chelsea, each £20,000; and Samuel Wood, Cleveland Street, Mile End, £14,000, and the latter gentleman's family £6,000; and I confirm all other bequests and give the rest of my property to the executors for their own interest. Gloucester City, Old Bank, July, 1835, James Wood;" and which said pretended paper writing is annexed to a certain affidavit of scripts made and sworn to by the said Thomas Helps, a legatee therein named, as aforesaid; and whereas our master, keeper, or commissary aforesaid, rightly and duly proceeding, hath, at the petition of the proctor of the said Matthew Wood, John Chadborn, Jacob Osborne, and John Surman Surman, decreed the Right Worshipful the Mayor and Corporation of the city of Gloucester, John Philpotts, George Worrall Counsel, (in the said codicil written Council,) the said Thomas Helps, Thomas Wood, and Samuel Wood to appear; to wit, the said Mayor and Corporation by their syndic, and the said John Philpotts, George Worrall Counsel,

Thomas Helps, Thomas Wood, and Samuel Wood, personally, or by their proctors or proctor, duly constituted, before our said master, keeper, or commissary, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after they shall have been served with this decree, if it be a general session, bye-day, caveat-day, or additional court-day of our said court; otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to propound and prove, by good and sufficient witnesses, in solemn form of law, the said pretended testamentary paper writing; if they, any or either of them, shall think it for their interest so to do; and further to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Matthew Wood, John Chadborn, Jacob Osborne, and John Surman Surman; and moreover you shall intimate, or cause to be intimated, to the said Right Worshipful the Mayor and Corporation of the city of Gloucester, John Philpotts, George Worrall Counsel, (in the said pretended codicil written Council,) Thomas Helps, Thomas Wood, and Samuel Wood, that if they, some or one of them, do or does not appear, or appearing do or does not shew good and sufficient cause, concludent in law to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed, and will proceed to do all such

judicial acts, matters, and things as shall be needful and necessary to be done in and about the premises; and what you shall do or cause to be done in the premises you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or any other competent judge in this behalf, together with these presents.

Dated at London, the 14th day of June, in the year of our Lord, 1836, and in the eighth year of our translation.

The primary plea, propounding the will and setting forth the *factum* of its execution, either alone or in conjunction with other circumstances, may be illustrated by the following forms :

*Allegation.*

In the Prerogative Court of Canterbury.

On Saturday, the seventh day of March, in the year 1840, before the Right Honourable the Judge, in the Common Hall of Doctors' Commons, London.

Allegation  
pleading the  
execution of  
a codicil.

MACKENZIE *against* YEO.

F. Clarkson.

Buckton.

A business of proving in solemn form of law, by good and sufficient witnesses, the true and original codicil to the last will and testament of George Acland Barbor, late of Fremington House, in the parish of Fremington, in the county of Devon, but at Frankfort on the Maine, Esquire, deceased,

On which day, F. Clarkson, in the name and as the lawful proctor of the said Anne Mackenzie, (wife of Tom Dight Mackenzie,) exhibited the true and original co-

such codicil bearing date the 6th day of July, 1838, promoted by Anne Mackenzie, (wife of Tom Dight Mackenzie,) formerly Melton, spinster, a legatee named in said codicil, against William Arundell Yeo, the sole executor named in the said will.

dicil to the last will and testament of the said George Acland Barbor, Esquire, the party in this cause, deceased, and now remaining in the registry of this court,

and beginning thus, "This is to certify that I the said George Acland Barbor, of Fremington, in the county of Devon, Esquire," ending thus, "And I fully authorize and command my heirs, executors, and administrators, each and every of them, to receive and view this in every respect as a codicil to my last will and testament, and discharge it accordingly," and thus subscribed, "G. A. Barbor," and by all better and more effectual ways, means, and methods, and to all effects and forms of law, which may be most beneficial and effectual for his said party, did say, allege, and in law articulately propound as follows, to wit:—

**First.**

That the said George Acland Barbor, the testator in this cause, being of the age of twenty-one years and upwards, and of sound and disposing mind, memory, and understanding, and having a mind and intention to make and execute a codicil to his last will and testament in writing, and thereby to benefit Anne Melton, spinster, (now Anne Mackenzie, wife of Tom Dight Mackenzie,) party in this cause, then and there present with him, began to write such codicil with his own

hand, but that being at such time in a nervous state, he, the said George Acland Barbor, after writing the two first words of the said codicil, told or instructed the said Anne Melton to go on writing and complete the same from his dictation; and that in pursuance of such instructions, and from the dictation of the said testator, the very codicil now pleaded and propounded in this cause, bearing date the sixth day of July, one thousand eight hundred and thirty-eight, was so drawn up and reduced into writing; that after the same was so drawn up and reduced into writing, it was read over audibly and distinctly to or by the said testator, who well knew and understood the contents thereof, and liked and approved of the same, and in testimony of such his good liking and approbation, he, the said testator, on or about the said sixth day of July, one thousand eight hundred and thirty-eight, being the day of the date of the said codicil, signed his name at the foot or end thereof, in manner and form as the same now appears, in the presence of two or more credible witnesses present at the same time, who (or at least two of whom,) respectively subscribed their names to the said codicil, in the presence of the said testator, as witnesses to the due execution thereof, in manner and form as also now appears thereon; that the said testator did give, will, bequeath, devise, dispose, and do in all things as in the said codicil is contained, and was, at and during all and singular the premises, of sound and disposing mind, memory, and understanding, talked and discoursed rationally and sensibly, and well knew what he said and did, and what was said and done in his presence, and was fully capable of making and executing a codicil to his last will and testament, or of

doing any other serious or rational act of that or the like nature, requiring thought, judgment, and reflection; and this was and is true, public, and notorious, and so much the said William Arundell Yeo, the other party in this cause, doth know or hath heard, and in his conscience believes, or hath confessed to be true, and the party proponent doth allege and propound every thing in this and the subsequent article of this allegation, contained jointly and severally.

Second.

That all and singular the premises were and are true, and so forth.

### *Allegation.*

Allegation  
pleading the  
execution of  
a will and  
other circum-  
stances.

Prerogative Court of Canterbury.

On the caveat-day after Trinity Term, to wit, Tuesday, the sixth day of September, in the year 1842.

**FILLER** *against* **YOUNG**, (formerly **FILLER**.)

A. G. Clarkson.

Buckton.

A business of bringing into and leaving in the registry of this court the probate of the last will and testament of William Filler, late of the two Brewers' Public House, Little Saint Andrew Street, Seven Dials, in the parish of Saint Giles in the Fields, in the county of Middlesex, Licensed Victualler, deceased, and of propounding and proving the said will in solemn form of law, by good and sufficient witnesses, or of

On which day, Buckton, in the name and as the lawful proctor of the said Sarah Young, (wife of James Young,) heretofore Filler, widow, and under that denomination exhibited the true and original last will and testament of the

shewing cause why the said probate should not be revoked and declared null and void, and the said will declared invalid, and the said deceased pronounced to have died intestate; promoted by George Filler, the natural and lawful son and only child of the said deceased, against Sarah Filler Young, (wife of James Young,) heretofore, widow, the relict and the sole executrix named in the true and original last will and testament of the said deceased.

said William Filler, deceased, bearing date the 23rd day of April, in the year 1840, and now remaining in the registry of this court, annexed the said will beginning thus, "this is the last will and testament of me, William Filler;" ending thus, "this

twenty-third day of April, one thousand eight hundred and forty," and thus subscribed "William Filler," and by all better and more effectual ways, means, and methods, and to all intents and purposes in the law whatsoever, which may be most beneficial and effectual for his said party, said alleged, and in law articulately propounded as follows, to wit.

That William Filler, the party in this cause, deceased, First. being of the age of twenty-one years and upwards, and of sound and disposing mind, memory, and understanding, and having a mind and intention finally to settle his affairs, and make and duly execute his last will and testament, in writing, did give directions and instructions for making the same, and pursuant to such directions and instructions, the very will now pleaded and exhibited in this cause, on the part and behalf of the said Sarah Young, (wife of James Young,) hereto-

fore Filler, widow, and now remaining in the registry of this court, bearing date, beginning, ending, and subscribed, as aforesaid, was drawn up and reduced into writing; and after the said will had been so drawn up and reduced into writing, the same was read all over audibly and distinctly to or by the said testator, who well knew and understood the contents thereof, and liked and approved of the same, and in testimony of such his good liking and approbation, he, the said testator, did, on or about the 23rd day of April, in the year 1840, being the day of the date of the said will, set and subscribe his name thereto, at the foot or end thereof, in manner and form as now appears thereon, and did make or acknowledge such signature in the presence of two or more credible witnesses present at the same time, who, or at least two of whom, thereupon respectively attested and subscribed the said will in the presence of the said testator and of each other, as witnesses of the due execution thereof, in manner as now appears thereon. And the said testator of his said will did nominate, constitute, and appoint his wife, the said Sarah Young, then Filler, sole executrix, and gave, willed, devised, bequeathed, disposed, and did in all respects as in the said will is contained and was at and during all and singular the premises, of sound and perfect mind, memory, and understanding, talked and discoursed rationally and sensibly, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of giving instructions for and making and executing his last will and testament, and of doing any other serious or rational act of that or the like nature, requiring thought, judgment, and reflection; and this was and is true, public, and noto-



rious, and so much the said George Filler, the other party in this cause, doth know, or hath heard, or in his conscience believes, and hath confessed to be true, and the party proponent doth allege and propound everything in this allegation contained, jointly and severally.

That William Wilkinson, one of the attesting and subscribing witnesses to the said will, since the making and execution thereof, left this country for the purpose of settling in the colony of Australia, and is now, if living, resident in some part or place of such colony, though where in particular the party proponent is unable to set forth; and the party proponent doth further allege and propound that the said William Wilkinson was and is, (if living,) a person of good character, credit, and reputation, and one who would not set or have set his name as a witness to any will, deed, or other instrument in writing whatsoever, unless he had seen the same duly executed, and was well convinced that the person executing the same was of sound and perfect mind, memory, and understanding, and that as and for such a person of good character, credit, and reputation the said William Wilkinson was and is commonly accounted, reputed, and taken, by and amongst his neighbours, friends, and acquaintances; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before. Second.

That the names, "William Wilkinson," appearing set and subscribed as the names of one of the attesting and subscribing witnesses, to the said will of the said deceased, were and are of the proper handwriting and subscription of the said William Wilkinson, in the next preceding article mentioned, and are so known or believed to be by divers persons of good faith and Third.

credit, who knew and were well acquainted with the said William Wilkinson, and have frequently seen him write, and also write and subscribe his name to writings, and are thereby and by other means become well acquainted with the manner and character of his handwriting and subscription; and this was and is true, and the party proponent doth allege and propound as before.

Fourth.

That all and singular the premises were and are true, public, and notorious, and so forth.

### *Allegation.*

Allegation  
pleading the  
execution of  
a will and  
other circum-  
stances.

Prerogative Court of Canterbury.

On the second session, Michaelmas Term, to wit,  
Thursday, the sixteenth day of November, 1843.

HOBART *against* HOBART.

Buckton.

Nelson.

A business of proving in solemn form of law, the last will and testament of George Hobart, late of Porchester Place, Oxford Road, Paddington, in the county of Middlesex, Esquire, Major of Her Majesty's Second Regiment of Dragoons, or Scots Greys, deceased, promoted by Mary Hobart, widow, the relict of the said deceased, and a legatee named in the said will, against the Reverend Henry Charles Hobart, Clerk, the na-

On which day, Buckton, in the name and as the lawful proctor of the said Mary Hobart, widow, and under that denomination, exhibited the true and original last will and testament of the said George Hobart, Esquire, deces-

tural and lawful father of the  
said deceased.

ed, bearing date  
the ninth day of  
May, in the year

one thousand eight hundred and forty-three, and now remaining in the registry of this court, beginning thus, "London, 9th May, 1843, 7, Porchester Place, Oxford Road. Sir, I now have;" ending thus, "the best for me, and believe me yours most truly;" and thus subscribed, "George Hobart;" and by all better and more effectual ways, means, and methods, and to all intents and purposes in the law whatsoever, which may be most beneficial and effectual for his said party said, alleged, and in law articulately propounded as follows, to wit:

That the said George Hobart, Esquire, the deceased, First.  
in this cause, being of the age of forty years, departed this life on the ninth day of May, in the present year one thousand eight hundred and forty-three, without child, leaving behind him the said Mary Hobart, widow, his lawful relict, and the Reverend Henry Charles Hobart, Clerk, his natural and lawful father, (the parties in this cause,) respectively the only persons entitled to his personal estate and effects, in case he had died intestate; that the said deceased was, at the time of his death, tenant for life of certain manors, lands, and hereditaments in the county of Norfolk, producing upon the average, after paying insurances and other ordinary outgoings, a clear annual sum of one thousand three hundred and fifty pounds per annum, or thereabouts, subject to the payment thereof of an annuity of five hundred pounds per annum, to his mother (now living) during her life, and also subject to the payment of eight hundred pounds per annum, or thereabouts,

for the interest of certain mortgage debts charged on the estates, to the extent, in the whole, of twenty thousand pounds, and was also, at the time of his death, possessed of or entitled to personal property amounting to the sum of nine thousand pounds, or thereabouts, the principal part of which last-mentioned sum arose from the sale of the commission held by the said deceased, as major in Her Majesty's aforesaid regiment, and which sale had been effected about a month previous to the death of the deceased, but charged with the sum of four thousand pounds, as hereinafter mentioned; and this was and is true, and so much the said Reverend Henry Charles Hobart, the other party in this cause, doth know, or hath heard, or in his conscience believes, and hath confessed to be true; and the party proponent doth allege and propound everything in this and the subsequent articles of this allegation contained, jointly and severally.

Second.

That in and by an indenture of settlement, bearing date on the twentieth day of November, one thousand eight hundred and thirty-nine, made prior to and in contemplation of the marriage of the said deceased with the said Mary Hobart, (party in this cause,) then Mary Walsh, spinster, between the said deceased, of the first part; John Walsh, Esquire, of the second part; the said Mary Walsh, now Hobart, daughter of the said John Walsh, of the third part; and Henry Garnett and William Bolton Cowley, Esquires, of the fourth part; after reciting, amongst other things, that the said John Walsh had agreed to give as a marriage portion with the said Mary Walsh, the sum of two thousand pounds sterling, and also to secure the sum of one thousand pounds sterling, to be payable on the day of

his decease, and reciting that the said George Hobart was desirous to make a provision for the said Mary Walsh, in case she should happen to survive him, or in case he should at any time thereafter fail in his circumstances, or become a bankrupt or insolvent; and that the said George Hobart, in consideration of the said marriage portion, had executed his bond, with warrant of attorney for confessing judgment thereon, to the said Henry Garnett and said William Bolton Cowley, for the sum of eight thousand pounds, conditioned for the payment of four thousand pounds sterling within the term of one calendar month next after the said George Hobart should sell and dispose of his said commission in her Majesty's service, it being, as set forth in the said indenture, the agreement and intention of the said George Hobart and all the other parties thereto, that he, the said George Hobart, should and would, when and so soon as circumstances might enable him, dispose of the said commission which he then held in Her Majesty's said Second Regiment of North Britain Dragoons, and, out of the sum to be received by such sale, pay to the said trustees the said full sum of four thousand pounds, the same to be held by them upon the trusts thereafter mentioned, of and concerning the same; it was witnessed, and thereby declared and agreed, that the said Henry Garnett and William Bolton Cowley should stand possessed of the said sum of two thousand pounds, and of the said sum of four thousand pounds, in the said indenture mentioned, after the solemnization of the said intended marriage, in trust, to invest the aforesaid sums as therein mentioned, and pay the interest and dividends thereof to the said deceased, for and during his natural life, and after his

decease to permit and suffer the said Mary Walsh to receive the same for and during her life, with a declaration or proviso, that in case there should be no child of the said intended marriage who, being his son, should attain his age of twenty-one years, or die before that age leaving lawful issue living at his death, or born in due time after, or being a daughter, before she should attain her age of twenty-one years, or be married with such consent as therein mentioned ; then, and in such case, the said trustees should stand possessed of the said sum of two thousand pounds and four thousand pounds respectively, and the stocks, funds, and securities aforesaid, upon which the same should be invested, with all dividends, interest, and annual proceeds thenceforth to become due and payable in respect of the same respectively, upon trust to pay and assign thereout two full third parts thereof to the said George Hobart, (if living,) or to the executors, administrators, appointees, or assigns of the said George Hobart, to the exclusion of the said Mary Walsh, and to pay, apply, and dispose of, or transfer the remaining one-third of the said trust funds to the said Mary Walsh, if then living, or to the executors, administrators, appointees, and assigns of the said Mary Walsh, to the exclusion of the said George Hobart, to and for their own absolute use and benefit, it being the intent of the parties thereto, that in the event of there being no issue of the said marriage entitled to the said trust funds, that the said George Hobart, or his next of kin, should be entitled to his portion of same, and the said Mary Walsh, or her next of kin, to her portion of the same ; and it was by the said indenture further declared and agreed that the aforesaid provision was meant and intended for the jointure of

the said Mary Hobart, then Walsh, and to be in bar of all dower out of any lands of the said deceased, and all thirds which she might otherwise be entitled to at common law, or under the Statute of Distributions, or otherwise howsoever; and it was declared and agreed that the said trustees should stand possessed of the said sum of one thousand pounds, secured thereby, to be paid on the death of the said John Walsh, as therein mentioned, when and as the same should be received, upon such and the same trusts in all respects as were thereinbefore expressed and declared, of and concerning the said sum of two thousand pounds, (the marriage portion of the said Mary Walsh,) and of and concerning the said one-third of the entire trust fund, in case of failure of issue of the said marriage, and none other whatever, as in and by the said indenture, which will be produced, if necessary, at the hearing of this cause, will more fully and at large appear; and this was and is true, and the party proponent doth allege and propound as before.

That the said George Hobart and Mary Walsh, two Third. of the parties mentioned in the said indenture, were shortly after the date thereof duly married, and that there is no issue of the said marriage. That the said George Hobart, on or about the sixth day of April, in the present year 1843, in pursuance of the agreement and intention in the said indenture mentioned, sold and disposed of the said commission therein referred to; that such sale realized in the whole the sum of nine thousand pounds; to wit, the sum of four thousand four hundred and twenty-five pounds, which was standing, at the death of the said deceased, to his credit at Messrs. Barclay and Company's, and the sum of four:

thousand five hundred and seventy-five pounds, a balance of which and certain pay, amounting to the sum of four thousand one hundred and twenty-four pounds was standing, at the death of the said deceased, to his credit at Messrs. Hopkinson and Company's, army agents; and this was and is true, and the party proponent doth allege and propound as before.

**Fourth.**

That about six months prior to the death of the said deceased he was attacked with an affection of the heart; that about six weeks before his death the symptoms of such complaint increased, and assumed an alarming appearance, although the said deceased was sometimes apparently better; that, about ten days before his death, the said deceased expressed his intention of going abroad at some future time; and this was and is true, and the party proponent doth allege and propound as before.

**Fifth.**

That on the evening of the ninth day of May last, the said deceased being then confined to his bed-room, owing to his indisposition, in the next preceding article mentioned, suddenly, to wit, at about nine o'clock, evinced and expressed great uneasiness, and desired pen, ink, and paper to be brought to him, declaring that he would make his will that night, or words to that very effect; that the same having been so brought to him, and a table placed by his side, he, the said deceased being then of the age of twenty-one years and upwards, and of sound and disposing mind, memory, and understanding, and having a mind and intention finally to settle his affairs and to make and duly execute his last will and testament, with his own hand drew up and reduced into writing the very paper writing or will pleaded and exhibited in this cause, on the part and behalf of



the said Mary Hobart, widow, and now remaining in the registry of this court, beginning, ending, and subscribed as aforesaid; and after he had so drawn up the said will, he set and subscribed his name at the foot or end thereof in manner and form as now appears thereon, and made or acknowledged such signature, and also acknowledged and declared the said paper writing to be and contain his last will and testament in the presence of several witnesses present at the same time, two of whom, at his special request, respectively attested and subscribed the said will, in the presence of the said testator and of each other as witnesses of the due execution thereof, in manner and form as now appears thereon; that the said testator gave, willed, devised, bequeathed, disposed, and did in all respects as in the said will is contained; and this was and is true, and the party proponent doth allege and propound as before.

That whilst the said testator was in the act of writing the said will, he exclaimed, addressing himself to George Matthew Ryder, one of the attesting witnesses to the said will, "This is a funny will, so many persons present, or so many persons watching," or to that or the like effect. That when Thomas Akehurst, the other attesting witness, had subscribed his name to the said will, the said deceased inquired whether it would not be better that the said Thomas Akehurst should also write his place of residence? adding, "There is no telling where he will be when the will, (meaning the paper writing now propounded,) is opened." That the said deceased also immediately after the execution of the said will expressed a wish to the said George Matthew Ryder to be buried, in case of his death, at the cemetery at Kensal Green; that after the execution of the said

Sixth.

will, the symptoms of the said complaint became more unfavourable, and at about eleven o'clock the same evening the said deceased, when attempting to walk across the room, suddenly dropped down and expired; and this was and is true, and the party proponent doth allege and propound as before.

Seventh.

That the said deceased, as well at and during all and singular the premises in the two next preceding articles pleaded, as also before and up to the time of his death, was of sound and perfect mind, memory, and understanding; talked and discoursed rationally and sensibly, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of making and executing his last will and testament, and of doing any other serious or rational act of that or the like nature requiring thought, judgment, and reflection; and this was and is true, and the party proponent doth allege and propound as before.

Eighth.

That the father and mother of the said deceased had lived separate and apart from each other for many years; in fact, from the time when the said deceased was only seven years of age; and the deceased had never any communication with his father from that time until the death of the deceased, except in the way of business and through the intervention of professional agents; and this was and is true, and the party proponent doth allege and propound as before.

Ninth.

That all and singular the premises were and are true, public, and notorious, and so forth.

*Allegation.*

That the said Taver Penny, the testator in this cause, being of sound and disposing mind, memory, and understanding, and having a mind and intention to make and execute his last will and testament in writing, did give directions and instructions for the making and preparing the same; and that, pursuant to and in accordance with such directions and instructions, the very will now remaining in the registry of this court, beginning, ending, and subscribed as hereinbefore recited and pleaded and exhibited in this cause on the part and behalf of the said Elizabeth Turner, widow, was drawn up and reduced into writing; and that after the same had been so drawn up and reduced into writing, the same was read over, audibly and distinctly, to or by the said testator, who well knew and understood the contents thereof, and liked and approved of the same, and expressed his good liking and approbation thereof, and in testimony of such his good liking and approbation of his said will, he, the said testator, did, on or about the said fifth day of April, in the year of our Lord one thousand seven hundred and ninety-two, set and subscribe his name thereto, in manner and form as now appears thereon, and did seal, publish, and declare the same as and for his last will and testament in the presence and hearing of several credible witnesses, three of whom in his presence, at his request and in the presence of each other, did severally set and subscribe their names thereto in manner and form as now appear thereon. And the party proponent doth further allege and propound that the said testator did not of his said

Allegation  
pleading the  
execution of  
a will and  
other cir-  
cumstances.  
First.

will name or appoint any executor, but did therein name his mother, Mary Penny, (who died in his lifetime,) universal legatee for life, and after her decease gave and devised all his estates and property to be divided amongst his three sisters, Jane Stevens, (who also died in his lifetime,) and the said Elizabeth Turner, and Harriet Penny, or their children, in such proportions as his said mother should appoint by her last will and testament, or by any deed in writing made by her in her lifetime; and did give, will, devise, bequeath, and do in all things as in the said will is contained, and was, at and during all and singular the premises, of sound, perfect, and disposing mind, memory, and understanding, and talked and discoursed rationally and sensibly, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of giving instructions for and of making and executing his last will and testament, and of doing any other serious or rational act of that or the like nature, requiring thought, judgment, and reflection. And this was and is true, and so much the said Harriet Penny, spinster, the other party in this cause, doth know or hath heard, and in her conscience believes and hath confessed to be true; and the party proponent doth allege and propound everything in this and the subsequent articles contained jointly and severally.

Second.

That the signature or subscription "Taver Penny" appearing set and subscribed to the said will propounded in this cause, was and is of the own proper hand-writing and subscription of the said Taver Penny, the deceased in this cause, and is so well known or believed to be by divers persons of good character, credit, and reputation, who have frequently seen the said Taver

Penny write and subscribe his name to writings, and who have thereby or by other means become well acquainted with the manner and character of his handwriting and subscription; and this was and is true, and the party proponent doth allege and propound as before.

That Thomas Rodber, Esquire, one of the subscribed witnesses to the said will pleaded and propounded in this cause, was a person of independent fortune, residing at Weymouth, in the county of Dorset, and departed this life on or about the                      day of March, in the year of our Lord one thousand eight hundred and thirty-four, and was buried on the twenty-first day of the said month of March, in the said year, in the burial-ground or in a vault belonging to the parish church of Radipole, in the said county of Dorset, and that an entry of such burial was duly made in the register-book of burials kept in and for the said parish for the said year; and this was and is true, and the party proponent doth allege and propound as before. Third.

That, in supply of proof of part of the premises pleaded and set forth in the next preceding article, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex, and pray may be here read and inserted and taken as part and parcel hereof a certain paper writing now marked with the letter A, and doth allege and propound the same to be and contain a true copy of the entry of the burial of the said Thomas Rodber, as mentioned in the said next preceding article. That the same hath been faithfully extracted from the register-book of burials kept in and for the said parish of Radipole, in the said county of Dorset, and hath been carefully collated and Fourth.

examined with the original entry now remaining therein and hath been found to agree therewith. That all and singular the contents of the said exhibit were and are true. That all things were so and had done as are therein contained; and that "Thomas Rodber," therein mentioned, and "Thos. Rodber," one of the subscribed witnesses to the execution of the said last will and testament of the said Taver Penny, the testator in this cause, deceased, was and is one and the same person and not divers; and this was and is true, and the party proponent doth allege and propound as before.

Fifth.

That the name and words "Thos. Rodber," appearing set and subscribed as a witness at the foot of the said last will and testament of the said deceased propounded in this cause, were and are of the own proper hand-writing and subscription of the aforesaid Thomas Rodber, deceased, and are so well known or believed to be by divers persons of good character, credit, and reputation, who have frequently seen him write and subscribe his name to writings, and who have thereby, or by other means, become well acquainted with the manner and character of his hand-writing and subscription; and this was and is true, and the party proponent doth allege and propound as before.

Sixth.

That the said Thomas Rodber was a person of good character, credit, and reputation, and would not have set and subscribed his name as a witness of the execution of the said will of the said deceased by him or any other instrument or document, unless the person executing the same had been of sound mind, memory, and understanding, and had duly executed the same in his presence; and that for and as such a person he, the

said Thomas Rodher, was always accounted, reputed, and taken to be by and amongst his neighbours, friends, acquaintances and others; and this was and is true; and the party proponent doth allege and propound as before.

. That William Brown, one other of the subscribed witnesses to the said will, was a merchant residing at East Sheen, in the parish of Mortlake, in the county of Surrey, and departed this life on or about the day of July, in the year of our Lord one thousand eight hundred and three, at East Sheen aforesaid, and was buried on the twenty-second day of the said month of July in the said year in the burial-ground or in a vault belonging to the parish church of the said parish of Mortlake, and that an entry of such burial was duly made in the register-book of burials kept in and for the said parish for the said year; and this was and is true; and the party proponent doth allege and propound as before. Seventh.

. That in supply of proof of part of the premises pleaded and set forth in the next preceding article, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex and pray may be here read and inserted and taken as part and parcel hereof a certain paper writing now marked with the letter B, and doth allege and propound the same to be and contain a true copy of the entry of the burial of the said William Browne as mentioned in the said next preceding article. That the same hath been faithfully extracted from the register-book of burials kept in and for the said parish of Mortlake, in the county of Surrey, and hath been carefully collated and examined with the original entry now remaining Eighth.

therein, and hath been found to agree therewith. That all and singular the contents of the said exhibit were and are true. That all things were so had and done as are therein contained, and that "William Browne" therein mentioned and "Wm. Browne" one of the subscribed witnesses to the execution of the said last will and testament of the said Taver Penny, the testator in this cause, deceased, was and is one and the same person and not divers; and this was and is true, and the party proponent doth allege and propound as before.

Ninth.

That the name and words "Wm. Browne" appearing, set, and subscribed as a witness at the foot of the said last will and testament of the said deceased propounded in this cause, were and are of the own proper hand-writing and subscription of the aforesaid William Browne, deceased, and are so well known or believed to be by divers persons of good character, credit, and reputation, who have frequently seen him write and subscribe his name to writings, and who have thereby, or by other means, become well acquainted with the manner and character of his hand-writing and subscription; and this was and is true, and the party proponent doth allege and propound as before.

Tenth.

That the said William Browne was a person of good character, credit, and reputation, and would not have set and subscribed his name as a witness of the execution of the said will of the said deceased by him or any other instrument or document, unless the person executing the same had been of sound mind, memory, and understanding, and had duly executed the same in his presence; and that for and as such a person he, the



said William Browne, was always accounted, reputed, and taken to be by and amongst his neighbours, friends, acquaintance, and others; and this was and is true, and the party proponent doth allege and propound as before.

That John Herbert Browne, the other subscribed witness to the said will, was a merchant residing at East Sheen, in the parish of Mortlake, and county of Surrey aforesaid, and departed this life on or about the            day of February, in the year of our Lord one thousand eight hundred and thirty-three, at East Sheen aforesaid, and was buried on the twenty-sixth day of the said month of February in the said year, in the burial-ground or in a vault belonging to the parish church of Mortlake, in the said county of Surrey, and that an entry of such burial was duly made in the register-book of burials kept in and for the said parish for the said year; and this was and is true, and the party proponent doth allege and propound as before. Eleventh.

That, in supply of proof of part of the premises pleaded and set forth in the next preceeding article, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex and pray may be here read and inserted and taken as part and parcel hereof, a certain paper writing now marked with the letter C, and doth allege and propound the same to be and contain a true copy of the entry of the burial of the said John Herbert Browne as mentioned in the said next preceding article: that the same hath been faithfully extracted from the register-book of burials kept in and for the said parish of Mortlake, in the county of Surrey, and hath been carefully collated and examined with the original entry now remaining Twelfth.

therein, and hath been found to agree therewith: that all and singular the contents of the said exhibit were and are true: that all things were so had and done as are therein contained, and that "John Herbert Browne" therein mentioned and "J. H. Browne," one of the subscribed witnesses to the execution of the said last will and testament of the said Taver Penny, the testator in this cause, deceased, was and is one and the same person and not divers; and this was and is true, and the party proponent doth allege and propound as before.

Thirteenth. That the letters and name "J. H. Browne" appearing set and subscribed as a witness at the foot of the said last will and testament of the said deceased propounded in this cause, were and are of the own proper hand-writing and subscription of the aforesaid John Herbert Browne, deceased, and are so well known or believed to be by divers persons of good character, credit, and reputation, who have frequently seen him write and subscribe his name to writings, and who have thereby or by other means become well acquainted with the manner and character of his hand-writing and subscription; and this was and is true, and the party proponent doth allege and propound as before.

Fourteenth. That the said John Herbert Browne was a person of good character, credit, and reputation, and would not have set and subscribed his name as a witness of the execution of the said will of the said deceased by him, or any other instrument or document, unless the person executing the same had been of sound mind, memory, and understanding, and had duly executed the same in his presence; and that for and as such a person he the said John Herbert Browne was always:

accounted, reputed, and taken to be by and amongst his neighbours, friends, acquaintance, and others; and this was and is true, and the party proponent doth allege and propound as before.

That the said Taver Penny, the testator in this cause, Fifteenth.  
departed this life on the sixth day of November, in the year of our Lord one thousand eight hundred and forty-one, a bachelor, without a parent, leaving behind him the said Elizabeth Turner, widow, and Harriet Penny, spinster, the respective parties in this cause, his natural and lawful sisters and only next of kin, and the only persons who would have been entitled in distribution to his personal estate and effects in case he had died intestate: and that in the month of December, in the said year, the said Elizabeth Turner and Harriet Penny, under a belief that the said deceased had died intestate, applied for and obtained letters of administration of all and singular the goods, chattels, and credits of the said deceased to be committed and granted to them, by the authority of this court, as by the acts and records thereof, to which the party proponent prays leave to refer, doth appear; and this was and is true, and the party proponent doth allege and propound as before.

That in the month of April, in the present year one Sixteenth.  
thousand eight hundred and forty-two, the will of the said deceased, propounded in this cause, having been discovered among some of the papers of the deceased, of moment and concern, by William Manfield, of Dorchester, in the said county of Dorset, the solicitor of the said Harriet Penny, he the said William Manfield, by her direction or with her privity and consent, communicated such fact to the said Elizabeth Turner, in

order that probate of the said will might be obtained in this court, and a reduction of duty secured thereby; and this was and is true, and the party proponent doth allege and propound as before.

Seventeenth. That the will of the said Taver Penny propounded in this cause, is in the words or to the effect following, "I, Taver Penny, of the Royal Navy, do declare this my last will and testament, and do hereby give and devise unto my mother, Mary Penny, for her natural life, all estates real and personal that I may be in possession of at the time of my decease, or be entitled to in reversion, as also all other property whatsoever: and at the decease of my said mother I do will and devise that all the said estates and property shall be divided amongst my three sisters, Jane Stevens, Elizabeth Turner, and Harriet Penny; or their children, in such proportions as she my said mother shall appoint by her last will and testament, or by any deed in writing made by her in her lifetime. Given under my hand and seal this fifth day of April, one thousand seven hundred and ninety-two." That Mary Penny, the mother of the said deceased, the universal legatee for life, with power of appointment therein-named, departed this life in the lifetime of the said testator, and that Jane Stevens, the sister of the said testator, therein also mentioned, also departed this life in the lifetime of the said testator without leaving any issue, and that Elizabeth Turner, the sister of the said deceased, one of the parties in this cause therein also mentioned, has two children living. That the parties in this cause having obtained legal advice as to the construction and operation of the said will, and having been advised that, by virtue of the terms of the same and under the circumstances herein-

before pleaded, the said Elizabeth Turner, Harriet Penny, and the two children of the said Elizabeth Turner, had severally and respectively acquired vested interests, each in one-fifth part or share of the estate and effects of the said testator, and that, as to the remaining fifth part or share, the testator was dead intestate, and that the same was become divisible in equal shares between the said Elizabeth Turner and Harriet Penny, as his only next of kin, a monition was issued under seal of this court against the said William Manfield, and duly served upon him to bring the said will into and to leave the same in the registry of this court, and that accordingly, on the third session of Trinity Term, to wit, Tuesday, the fourteenth day of June, now last past, the said William Manfield, in obedience to the said monition, brought the said will into and left the same in the registry of this court accordingly, and that the letters of administration of the goods of the said deceased theretofore erroneously applied for and obtained by the said Elizabeth Turner and Harriet Penny, as hereinbefore pleaded, were then also brought into and left in the registry of this court; and this was and is true, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true, and so forth. Eighteenth.

*Allegation propounding a Will in its original State.*

That the said original will of the said William Brooke, Esquire, the testator, pleaded and propounded in this cause on the part and behalf of the said John

Allegation  
propounding  
will in its  
original  
state.

First.

Reeve, was drawn up and prepared from directions or instructions given by him, the testator, and the draft thereof having been settled with him, the said original will was ingrossed or copied therefrom for execution; and the same having been read over to or by him, and approved of by him, was, on or about the fifteenth day of July, in the year 1837, being the day of the date thereof duly executed by him, the testator, in the presence of divers credible witnesses, three of whom duly attested the execution thereof as subscribing witnesses thereto; and that he, the said testator, did, in and by his said will, nominate, constitute, and appoint the said John Reeve, (his nephew,) and the said Edmund Kent, (then the younger,) the parties in this cause, executors, and did give, will, bequeath, dispose, and do in all things as was then in the said will contained; and this, &c.

Second.

That the said testator did, in and by his aforesaid will, pleaded and exhibited in this cause, (amongst other things,) empower each of the several persons thereby respectively made tenants for life of his manors and freehold hereditaments thereby devised, to appoint, under certain limitations therein mentioned, to the use of the woman with whom such tenant for life might intermarry, for the life of such woman respectively, and, as her jointure, any annual sum or yearly rent-charge not exceeding, in the whole, the sum of two hundred pounds, to be yearly issuing out of his manors and freehold hereditaments, with a proviso that his said estates should not, under the said power, be at any one time subject to the payment of more than the annual sum of four hundred pounds for jointures; and the said testator did, by his said will, declare that if, by exercise of such powers, his said manors and freehold

hereditaments should be charged with a greater sum for jointures, in the whole, than the said sum of four hundred pounds, then the payment of the sums occasioning such excess should, during the period of such excess, be suspended; and the party proponent doth allege and propound that the said power of appointment was contained in the said will at the time of the execution thereof, and remained unaltered in all respects until the same was altered by the said testator in respect to the amount of the jointures so made chargeable on his manors and freehold hereditaments, at the time and in manner hereinafter mentioned; and this, &c.

That in part supply of proof of the premises in the Third.  
next preceding article mentioned, and to all other intents and purposes in the law whatsoever, the party proponent craves leave to refer to a certain paper writing now remaining in the registry of this court, annexed to an affidavit of Martin Bambridge the younger, and marked with the letter B, and doth allege and propound the same to be the original draft from which the said will, pleaded and propounded in this cause, was ingrossed or copied for execution; and that the said draft is now (save in respect to the marking thereof, and the names of the attesting witnesses, and certain other additions subsequently written at the end thereof) in the same plight and condition as it was when the said will was ingrossed or copied therefrom, and the party proponent doth allege and propound that the said will was, previous to the execution thereof, collated with the said draft, and found to agree therewith in all respects; and that the said draft, and, in particular, such part of the same (to wit, the tenth and eleventh sheets thereof) which contains the aforesaid

power of appointment to the tenants for life for the benefit of their respective wives, was and is a true and exact counterpart of the said will, as it appeared at the time it was executed by the said testator on the said fifteenth day of July, 1837, as hereinbefore pleaded; and this, &c.

Fourth.

That, subsequently to such the execution of his said will, the said testator, having a mind and intention to alter the amount of the annual jointure thereby, as aforesaid, made chargeable on his said manors and hereditaments for the wives of the respective tenants for life thereof, did, on or about the twenty-sixth day of June, in the year 1838, with his own hand, alter the same from two hundred pounds to one hundred pounds, by erasing with a knife, in the twenty-third line of the sixth sheet thereof, the word "two," in the words two hundred pounds, the amount of such proposed annual jointure or rent-charge, and by writing the word "one" in the place thereof upon such erasure, in manner as now appears in the said will; and he, the said testator, did, at or about the same time, with his own hand, alter the amount of the sum to which the whole of the said annual jointures or rent-charge to be at any one time in force under and in virtue of the said power were limited from four hundred pounds to two hundred pounds, by erasing with a knife, in the first and also in the fifth lines of the seventh page of his said will, a portion of the letter "F," being the initial letter of the word "four," in such sum of four hundred pounds, occurring in the said lines respectively, and thereby converting such initial letter into the letter "T," and also by erasing, with a knife, the letters "our," the other letters of the said words "four," and "four," and by writing in the place



thereof, upon such erasures, the letters "wo," after the said letter "T" so altered in the said lines respectively, in manner as also appears in the said will; and the party proponent doth further allege and propound that the said testator, after he had so made the said alterations in his said will, did, in token of his approval thereof, and with an intention of giving effect thereto, at or about the same time, with his own hand, under the names of the subscribing witnesses, in the last sheet of his said will, write and subscribe with his name the words or memorandum following, to wit:—

"The erasures in the twenty-third line of the sixth sheet, the word 'two' taken out, and the word 'one' put in its place; and, in the first line of the seventh sheet, the word 'four' taken out, and the word 'two' put in its place; and, in the fifth line of the seventh sheet, the word 'four' taken out, and the word 'two' put in its place,—By me, Wm. Brooke,—June the twenty-sixth, one thousand eight hundred and thirty-eight," in manner as now appears in the said will; but the party proponent doth allege and propound that the said testator did not make the said alterations in his said will, nor write and sign the aforesaid words or memorandum at the end thereof in the presence of two or more witnesses, and that, by reason thereof, the said alterations are invalid, and of no effect in law; and this, &c.

That the letters "T" and "T," now appearing as Fifth. the initial letters of the said respective words "Two" and "Two," so substituted for the said words "Four" and "Four," in the said first and fifth lines of the said seventh sheet of the said will, and which formed part of

the letters "F" and "F" in the words "Four" and "Four," originally written in the said lines, and which were afterwards converted from such letter F, by the erasure of the cross stroke thereof, into the letter T, as in the next preceding article is pleaded, were and are of the proper handwriting of Martin Bambridge, the younger, by whom the said will was ingrossed or copied for execution; and that the aforesaid word "One," now appearing written on an erasure in the twenty-third line of the said sixth sheet of the said will, and the letters "wo" and "wo" also appearing written respectively on erasures, and being the other letters of the said words "Two" and "Two" in the said first and fifth lines of the said seventh sheet thereof; and also the whole body, series, and contents of the aforesaid words or memorandum appearing written under the names of the subscribing witnesses in the last sheet of the said will, and the names and date, "Wm. Brooke, June the twenty-sixth, one thousand eight hundred and thirty-eight," written and subscribed as aforesaid at the foot of such words or memorandum, were and are of the proper handwriting and subscription of the said William Brooke, the testator in this cause, and so well known or believed to be by divers persons of good faith and credit, who are well acquainted with his manner and character of handwriting and subscription, from having frequently seen him write, and write and subscribe his name to writings, or by other means; and this, &c.

Sixth.

That the said William Brooke, the testator, was, at and during all and singular the premises in the preceding articles of this allegation pleaded, of sound and

disposing mind, memory, and understanding, and fully capable of doing any serious or rational act requiring thought, judgment, and reflection ; and this, &c.

That all and singular the premises were and are true, and so forth. Seventh.

***Allegation propounding a Will in its present State.***

That William Brooke, the testator in this cause, after he had executed his will, bearing date the fifteenth day of July, one thousand eight hundred and thirty-seven, pleaded and referred to in the allegation given in on the behalf of John Brooke, heretofore Reeve, one of the parties in this cause, bearing date the twenty-fourth day of January, one thousand eight hundred and forty, having a mind and intention to make an alteration therein, with respect to the amount of the jointures thereby chargeable on his manors and hereditaments, on or about the twenty-sixth day of June, one thousand eight hundred and thirty-eight, erased, or caused to be erased, the word "Two," in the twenty-third line of the sixth sheet of the said will, and, in the place of the said word "Two," wrote the word "One" in the said line ; and that he also, at or about the same time, erased, or caused to be erased, partially, in the first and fifth lines of the seventh sheet of the said will, the word "Four;" and, by altering the letter "F" in the said word, and otherwise writing thereon, converted the said word into the word "Two;" and, by the said three alterations, he, the said testator, reduced the jointures by his said will made chargeable on his said

Allegation  
propounding  
a will in its  
present  
state.  
First.

manors and hereditaments to the annual sum of one hundred pounds, and limited the amount for which his said estates should at any one time be chargeable on account of such jointures to the annual sum of two hundred pounds; and the party proponent doth further allege and propound that the said testator, after he had made the said alterations, in token of his approval thereof, and with an intention of giving effect thereto, at or about the same time, with his own hand, under the names of the subscribing witnesses, in the last sheet of his said will, wrote the words or memorandum following, to wit:—"The erasure in the twenty-third line of the sixth sheet, the word 'Two' taken out, and the word 'One' put in its place; and, in the first line of the seventh sheet, the word 'Four' taken out, and the word 'Two' put in its place; and, in the fifth line of the seventh sheet, the word 'Four' taken out, and the word 'Two' put in its place,—By me, Wm. Brooke,—June the twenty-sixth, one thousand eight hundred and thirty-eight;" and signed his name thereto in manner as now appears in the said will; and the party proponent doth expressly allege and propound that the said testator was, at and during all and singular the premises, of perfect, sound, and disposing mind, memory, and understanding, and was fully capable of making or altering his said will, and of doing any serious or rational act requiring thought, judgment, and reflection; and the party proponent doth further expressly allege and propound, that the aforesaid will having been executed previously to the first day of January, one thousand eight hundred and thirty-eight, the aforesaid alterations therein are valid and effectual in law, to all intents and purposes; and this, &c.

: That the letters "T" and "T," now appearing as the initial letters of the said respective words "Two" and "Two," so substituted for the said words "Four" and "Four," in the said first and fifth lines of the said seventh sheet of the said will, and which formed part of the letters "F" and "F," in the words "Four" and "Four," originally written in the said lines, and which were afterwards converted from such letter "F," by the erasure of the cross stroke thereof, into the letter "T," as in the next preceding article is pleaded, were and are of the proper handwriting of Martin Cambridge, the younger, by whom the said will was engrossed or copied for execution; and that the aforesaid word "One," now appearing written on an erasure in the said twenty-third line of the said sixth sheet of the said will, and the letters "wo" and "wo," also appearing written respectively on erasures, and being the other letters of the words "Two" and "Two," in the said first and fifth lines of the said seventh sheet thereof, and also the whole body, series, and contents of the aforesaid words or memorandum appearing written under the names of the subscribing witnesses in the last sheet of the said will, and the names and date, "Wm. Brooke, June the twenty-sixth, one thousand eight hundred and thirty-eight," written and subscribed as aforesaid at the foot of such words or memorandum, were and are of the proper handwriting and subscription of the said William Brooke, the testator in this cause, and are so well known or believed to be by divers persons of good faith, credit, and reputation, who are well acquainted with his manner and character of handwriting and subscription, from having

Second.

frequently seen him write, and write and subscribe his name to writings, or by other means; and this, &c.

Third.

That all and singular the premises were and are true, public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays that probate of the aforesaid last will and testament of the said William Brooke, the party deceased, bearing date the fifteenth day of July, one thousand eight hundred and thirty-seven, as aforesaid, may be committed and granted according to law in its present state, and that otherwise right and justice may be effectually done and administered to him and his said party in the premises.

### *Allegation.*

Allegation  
pleading specially the  
circumstances  
of the execution  
of a will.

First.

That the said Reverend Henry Masterman, Clerk, the testator in this cause, being upwards of twenty-one years of age, and having a mind and intention to make and execute his last will and testament in writing, did with his own hand write the very will pleaded and propounded in this cause, on the part and behalf of the said James Atterton Ilott, bearing date the eighth day of September, in the year of our Lord 1841, and beginning and ending as aforesaid; and he the said testator well liked and approved of his said will; and in testimony of such his good liking and approbation, subscribed the same at the foot or end, and that he so subscribed the said will in the presence of two witnesses present at the same time; and the party proponent doth allege and propound that, on the said eighth day of September, the said testator at about four o'clock in the afternoon,

called on Samuel Hopkins, the parish clerk of Milton Abbas aforesaid, who was at work as a tailor in his shop, with Henry Eaton, his son-in-law, and said, "I want to hinder you two for a short time, to come to my house to sign a paper for me," or to that very effect, upon which the said Samuel Hopkins said, "We will come immediately." That the said testator then left and went to his own house; that the said Samuel Hopkins and Henry Eaton shortly afterwards followed him, and well knowing the house, walked into the said testator's study, where they found him standing at his writing-desk, which was so placed on a small table near the wall that his back was turned towards them as they entered the room; that on their entering the said room, the said testator turned round and said, "Well, Mr. Hopkins, you are come: I want you to sign this paper for me." The said testator then turned round again to his writing-desk, and still standing up, did something with the paper, and, as it appeared to them, from his attitude and manner, that he was writing upon it. That after a short interval, during which the said testator was so employed, he moved the paper from the desk, and put it on the table on which the desk was standing, and said, pointing with his finger to the bottom thereof, "Sign your names here." That the said Samuel Hopkins then took the pen, which was in the ink bottle, and which apparently the said testator had been just using, and signed his name in the said testator's presence, and in the presence of the said Henry Eaton, and the said Henry Eaton also signed his name in the presence of the said Samuel Hopkins and of the said testator, but that the upper part of the said paper was so folded or turned down as to conceal the writing

on the concluding part thereof, so that the said Samuel Hopkins and Henry Eaton could not see whether or no there was any signature or seal to it. That the said testator, on the same afternoon called on John Chaffey at the School House, and requested him to put his name to the said paper, under those of the said Samuel Hopkins and Henry Eaton, which he accordingly did; that the said paper was again so folded or turned down as to conceal the writing on the concluding part thereof, but neither the said Samuel Hopkins or Henry Eaton were present when this third person signed; and the said testator did in and by his said will nominate, constitute, and appoint the said James Atterton Ilott one of the executors thereof, and did give, will, bequeath, dispose, and do in all things as in the said will is contained, and was at and during all and singular the premises of sound mind, memory, and understanding, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of making and executing his last will and testament in writing, and of doing any other serious or rational act of that or the like nature, requiring thought, judgment, and reflection; and this, &c.

Second.

That the whole body, series, and contents of the said will beginning and ending as aforesaid, and the subscription "Henry Masterman," thereto set and subscribed, were and are of the proper handwriting and subscription of the said Henry Masterman, the deceased in this cause, and are so well known or believed to be by divers persons of good faith and credit, who have frequently seen him write and subscribe his name, and are thereby become well acquainted with the manner and character of his handwriting and subscription;



and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

Is the usual concluding article.

Third.

*Allegation.*

Prerogative Court of Canterbury.

On the third session of Hilary Term, to wit, Friday, the second day of February, 1844.

Allegation propounding the substance of a will.

A business of proving, in solemn form of law, by good and sufficient witnesses, the last will and testament, bearing date in or about the month of November, 1831, or the contents, substance, or effect thereof of Joseph Humfrey, late of Upton, in the parish of Blewberry, in the county of Berks, promoted by Martha Humfrey, widow, the relict of the said deceased, and a legatee for life, named in the said will against Hannah Humfrey, spinster, Nathaniel Humfrey, Philip Humfrey, Phoebe Humfrey, spinster, Grace Humfrey, spinster, and Mary Humfrey, spinster, the natural and lawful and only children of the said deceased, and together with the said Martha Humfrey, the only persons

On which day Wills, in the name, and as the lawful proctor of the said Martha Humfrey, widow, exhibited the contents or substance or effect of the true and original last will and testament of the said deceased, bearing date in or about the month of November, 1831, as embodied or contained in an affidavit made and sworn to in this cause by the said Martha Humfrey, wi-

who would have been entitled in distribution to the personal estate and effects of the said deceased.

dow, and John Humfrey and Daniel Louseley, and now remaining in the registry of

this court, the said true and original last will and testament of the said deceased having been incautiously and unadvisedly destroyed by the said Martha Humfrey since the death of the said deceased, and under that denomination, and by all better and more effectual ways, means, and methods, and to all other intents and purposes in the law, which may be most beneficial and effectual for his said party, said alleged, and in law articulately propounded, as follows ; to wit.

First.

That the said Joseph Humfrey, the testator in this cause, departed this life on the 21st day of November, 1842, at the age of forty-seven years, or thereabouts, leaving him surviving the said Martha Humfrey, widow, his lawful relict, and Hannah Humfrey, spinster, Nathaniel Humfrey, Philip Humfrey, and Phoebe Humfrey, spinster, now in their minority, and Grace Humfrey, spinster, and Mary Humfrey, spinster, now in their infancy, his natural, lawful, and only children, respectively the only persons who would have been entitled in distribution to his personal estate and effects in case he had died intestate ; that the said testator, at the time of his decease, was seized or possessed of, or entitled to, freehold and copyhold property of the value of £15,000, or thereabouts, and personal estate of the amount or value of between £4,000 and £5,000 ; and this was and is true ; and so much Thomas Humfrey, the uncle, and curator or guardian, lawfully assigned to the said minors

and infants, the other parties in this cause, doth know or hath heard, and in his conscience believes and hath confessed to be true; and the party proponent alleges and propounds everything in this and the subsequent articles of this allegation cited jointly and severally.

That in or about the month of November, 1831, Second.  
being shortly after his recovery from an illness, the said testator with his own hand drew up and reduced into writing the very will, the substance or effect of which is set forth in a joint affidavit of the said Martha Humfrey, John Humfrey, and Daniel Louseley, now remaining in the registry of this court, and that after the said testator had so drawn and reduced the said will into writing, he duly executed the same; to wit, on the day in the month of November, 1831, on which it bore date, (but which is unknown to the party proponent,) in the presence of three or more credible witnesses, who, or at least three of whom, to wit, Richard James, Thomas Pitt, and George Butler, respectively duly attested such the due execution thereof by the said testator; that the said testator, in and by his said will, gave and bequeathed the whole of his estate and property, of what nature or kind soever, to his brothers and brothers-in-law, Thomas Humfrey, Job Louseley, John Humfrey, Daniel Louseley, and William Humfrey, in trust, to sell and dispose of the same when his youngest child should become of age, and to allow his wife, the said Martha Humfrey, the annual sum of £200 for and during her life, and to divide the residue of his said property amongst all his children, but so that his daughters should each have two-thirds only of the portions of each of his sons; and that there was no executor named in the said will, nor any other legatee.

And the party proponent further alleges and propounds that the said testator was at and during all and singular the premises of sound and perfect mind, memory, and understanding, talked and discoursed rationally and sensibly, and well knew and understood what he said and did and what was said and done in his presence, and was fully capable of making and executing his last will and testament, or of doing any other serious or rational act of that or the like nature requiring thought, judgment, and reflection ; and this, &c.

Third.

That the only property, (exclusive of personalty,) of which the said testator was seized when he made his aforesaid last will and testament, was a freehold estate, situate at Upton aforesaid, which he had purchased for the sum of £6,500, or thereabouts, but that after he had so made the same, to wit, in the years 1834, 1836, 1839, 1841, and 1842, or at some other time or times respectively, he acquired certain other estates, both freehold and copyhold, situate respectively at Upton and elsewhere, in the parish of Blewberry aforesaid, of the value of £9,000, or thereabouts, and, that at the time of his making the said will, his, the testator's family, consisted of three children ; and this was, &c.

Fourth.

That the said testator became desirous of making and executing a new will, owing to the circumstances in the next preceding article pleaded, and that accordingly, on or about the 19th day of November, 1842, he, the testator, being then sick of the illness of which he shortly afterwards died, gave directions and instructions to his brother-in-law, Daniel Louseley, to prepare a new will for him. That the said Daniel Louseley, from such directions and instruction, drew up the very paper writing now remaining in the registry of this court,

annexed to the said Martha Humfrey's affidavit of scripts marked No. 1, and that the said testator, on the same day, duly signed the same in the presence of three witnesses. But the party proponent expressly alleges and propounds that the said witnesses, instead of subscribing the said paper writing up stairs in the chamber where he, the testator, was lying ill in bed, inadvertently signed it, as attesting the testator's execution thereof, in a room down stairs, called the hall, into which it had been taken for their greater convenience in so doing, and wholly out of the presence of him, the testator; and, &c.

That on the occasion of the testator giving instructions for, and afterwards signing the paper writing last aforesaid, his true and original last will and testament, (and of which the substance or effect is pleaded and propounded in this cause,) was taken out of a drawer in his bedroom, wherein the same had been deposited by the said Martha Humfrey, (and who was then already well aware of its contents,) and by her produced and shewn to the said Daniel Louseley and John Humfrey, both present on the occasion, and the former of whom then slowly and audibly read the same over to the latter and to the said Martha Humfrey, whereby the substance or effect of the said will became well known, so as to be perfectly recollected by each of the said persons respectively; and the party proponent further alleges and propounds that the said will was neither then, nor at any time afterwards, in any manner cancelled or revoked by the said testator; and, &c. Fifth.

That after the said testator's true and original last will and testament had been read over as aforesaid, it was replaced by the said Martha Humfrey in the Sixth.

drawer from which she had taken it, and from such time it remained therein, until about three months after the testator's death, when (to wit some time in the month of February, 1843,) she the said Martha Humfrey, in the presence of her daughter, Hannah Humfrey, spinster, and at the recommendation of the said Daniel Louseley, (who with herself considered, though erroneously, the said will to have been revoked by means of the paper writing mentioned in the fourth article of this allegation,) incautiously destroyed the same. And the party proponent expressly alleges and propounds that up to the time of such the destruction thereof, the said will was in the same entire state and condition in which it had been read over by the said Daniel Lousley to and in the presence of the said John Humfrey and Martha Humfrey, as pleaded in the next preceding article of the allegation; and this, &c.

Seventh.                      That all, and singular, &c.

*Allegation pleading Substance of lost Will.*

Allegation  
pleading sub-  
stance of lost  
will.

A business of proving in solemn form of law, by good and sufficient witnesses, the true and original last will and testament bearing date the 21st day of February, 1838, or a true copy, or the substance or effect thereof, of James S——, late of                      , Esquire, deceased, promoted by Louisa M——, spinster, the universal legatee therein named,

On which day, Ad-  
dams, in the name  
and as the lawful  
proctor of the  
said Louisa M—,  
spinster, exhibit-  
ed the true copy  
or substance, or  
effect of the true  
and original last  
will and testa-  
ment of the said

against Mary Ann S——, widow, the relict, sole executrix, and universal legatee named in a former will of the said deceased, bearing date the 14th day of April, 1835.

deceased, bearing date the 21st day of February, 1838, and which said copy or substance, or effect of the said will,

is in the words following, "I leave to Louisa M—— the whole of my property of which I am now possessed, both here and in England, dated in Paris, this 21st day of February, 1838," and thus subscribed or signed, "James S——," now remaining in the registry of this court, annexed to an affidavit of the said Louisa M—— as to scripts, marked with the letter A, (the said true and original last will and testament having been subsequently to the death of the said deceased, through inadvertence destroyed or so lost and mislaid that the same cannot be produced and exhibited in this court,) and under that denomination and by all better and more effectual ways, means, and methods, &c.

That the said James S——, Esquire, the party in First. this cause deceased, departed this life at the city of Paris, on the 21st day of February in the year 1838, of the age of forty years or thereabouts, leaving the said Mary Ann S——, widow, his relict, and the sole executrix and universal legatee, named and constituted in a will by him made and executed on the 14th day of April 1835, as appears by the same now remaining in the registry of this court, annexed to an affidavit of John S——, Esquire, as to scripts. That the said deceased quitted England in or about the month of

, in the year , and travelled to various parts of the continent of Europe, in the company of the said Louisa M——, party in this cause; and that they were residing together at a boarding-house, situate No. 18, in the Rue de Rivoli, in the city of Paris, at the time of his decease, to wit, on the 21st day of February, 1838, as aforesaid; and this was, &c.

Second.

That on the said 21st day of February, in the said year 1838, the said James S——, the testator in this cause, being very ill of the illness whereof he died, as aforesaid, and being desirous of making and executing his last will and testament, gave directions and instructions to Michael C——, Esquire, a gentleman with whom he had become acquainted from his residence in the same boarding-house, to draw up a will for him, the testator, to execute. That accordingly the said Michael C——, from the said testator's own instructions and dictation drew up and reduced into writing the very will, a true copy or the substance or effect whereof is exhibited and propounded in this cause, and which said will, when so drawn up and reduced into writing by the said Michael C——, was read audibly and distinctly to or by the said deceased, who liked and approved thereof, and in testimony of such his good liking and approbation, signed his name at the foot thereof, in the presence of divers credible witnesses, two of whom, both being present at the same time, to wit, the said Michael C——, and — B——, Doctor of Physio, attested and subscribed the said will in the presence of him, the deceased. That the said deceased did give, will, bequeath, dispose, and do in all things as in the said will is contained, and did therein



and thereby give the whole of the property of which he was possessed, both in France and England, to the said Louisa M——, and was at and during all and singular the premises of perfect, sound, and disposing mind, memory, and understanding, talked and discoursed rationally and sensibly, well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of giving instructions for and of making and executing his last will and testament in writing, or of doing any other serious or rational act of that or the like nature requiring thought, judgment, and reflection; and this &c.

That immediately after the execution of the said will, Third.  
as in the next preceding article of this allegation is pleaded, the same was, by or by the direction of the said testator, delivered to the said Louisa M——, (party in this cause, and who was present at the time the same was executed,) in whose custody and possession the same remained entire and uncanceled until after the death of the said deceased, which took place at midnight on the same day as aforesaid, and was afterwards seen, observed, and perused by the said Michael C——, to whom the same was on several occasions produced and shewn by the said Louisa M——, in such its original, entire, and uncanceled state, subsequently to that event; and this, &c.

That in or about the month of May, in the said year Fourth.  
1838, the said Louisa M—— quitted Paris, and returned to England, and a short time after such her return, (to wit, some time in the following month of June,) in searching for, in order to produce, the same to her solicitor, Mr.——, discovered that she had lost or so mislaid the said will that she was unable to pro-

duce the same; that the said Louisa M—— having made diligent search for the said will, but without success, was advised to, and did without any delay, make application to the said Michael C—— to furnish her with the substance or effect of the original will so drawn and written by him, as in the second article of this allegation is pleaded, and so far as he could recollect in the very words thereof. That the said Michael C—— in due course from such application, made and transmitted from Paris, where he resided, in his own hand-writing a copy thereof, from his memory and recollection, and (the said will having been very short,) in nearly the same words as the original, or at least of the same tenor and effect; and this, &c.

Fifth.

That the copy so made by the said Michael C—— as in the next preceding article is pleaded, and now remaining in the registry of this court, marked with the letter A, annexed to the affidavit of the said Louisa M——, as to scripts, and pleaded and exhibited in this cause in the place and stead of the said original will destroyed, or lost, or mislaid as aforesaid, is and contains in substance and effect (if not in the identical words of the original,) the last will and testament of the said deceased, the same as when it was executed by him, and remained uncanceled and entire, and as it was produced to, and seen, observed and perused by the said Michael C—— after the death of the said deceased, as hereinbefore is pleaded; and this, &c.

(The following additional articles in further explanation of the *res gesta* were afterwards filed in this case.)

*Additional Articles.*

That James S——, Esquire, the party in this cause, First.  
deceased, who departed this life in the city of Paris, at  
midnight, on Wednesday, the 21st day of February, in  
the year 1838, as pleaded in the first article of the  
aforesaid allegation, was in perfect and vigorous  
health, until the night of the Sunday preceding, in  
the course of which he was taken ill with a violent  
cold, terminating in an ulcerated throat, whereof he  
died as aforesaid, not having been considered in dan-  
ger, or had any professional advice, save that of a  
young medical student resident in the house, until  
the middle of the day on which he died. That  
Michael C——, (the drawer and writer of, and one  
of the subscribed witnesses to the last will and tes-  
tament of the said deceased, as also pleaded, to wit,  
in the second article of the said allegation,) visited  
the said deceased in his room about noon of the said  
21st day of February, when the said deceased who  
had received a medical education, intimated to the  
said Michael C——, (as conscious that his illness  
might be fatal,) and told him that he should probably  
soon require his services, and also told him in the  
event of his death, to write and apprise Messrs.  
J——, of                      , whom he described as his  
solicitors, of that event; that in consequence of what  
the deceased so said, the said Michael C—— then  
proposed to call in Doctor B——, an English Phy-  
sician resident in Paris, (and whom the deceased, as  
he said, had formerly known when studying medicine,)  
to which the said deceased assented, and thereupon

the said Michael C—— went to, and shortly afterwards brought, the said Doctor B—— to the said deceased, who after examining him expressed his opinion that he required great care and attention, but not that he was in any immediate danger, and appointed to visit him again in the afternoon of that day. And the party proponent doth further allege and propound, that the said deceased, pursuant to his said intimation to the said Michael C——, sent for him about five o'clock in the afternoon of the same day, for the purpose, as he learnt on attending him, of making his will, which the said Doctor B——, who came in very shortly after, and found the deceased much worse, recommended should be done without any loss of time; whereupon the very will, the substance of which is herein propounded, was made and duly executed, in manner pleaded in the said second article of the aforesaid allegation. And the party proponent doth further allege and propound that the said deceased was at and during all and singular the premises of sound and perfect mind, memory, and understanding, and well knew and understood what he said and did, and what was said and done in his presence, although from the effect of his disease he was only able to speak in a low tone of voice, and with difficulty, and so continued until a very short time of his decease; and this was, &c.

Second.

That the said Mary Ann S—— shortly after the death of the said deceased, came to Paris, and made application to the said Louisa M—— respecting the will of the said deceased, (of which she had heard through a letter written, addressed, and sent to the aforesaid Messrs. J——, by the said Michael C—— immediately upon that event,) and the pro-

perty left by the deceased in Paris, on the occasion of which application the said Louisa M—— produced and shewed the said will to —— O'R—— a lodger in the same house, who inspected and perused the same, (the said Michael C—— being also present at the same time,) in its entire and uncanceled state. And the party proponent doth expressly allege and propound that the paper writing now marked with the letter A, remaining in the registry of this court, annexed to an affidavit of the said Louisa M—— as to scripts, and pleaded and exhibited in this cause, in the place and stead of the said original will, is and contains, if not in the very words of the original, the substance and effect of the said original will, bearing date the 21st day of February, 1838, so produced to and inspected and perused by the said —— O'R——, on the occasion aforesaid, and wherein and whereby the said deceased left or gave the whole of his property both in France and in England, to the said Louisa ——; and this was, &c.

*Allegation pleading fragmentary Will.*

That the said Charles Foster, the deceased in this cause, died suddenly at his house, situate in the city of Lincoln, about eight o'clock in the evening of Wednesday, the 26th day of June, 1822, leaving behind him Ann Foster, widow, party in this cause, his lawful relict, and also Charles Foster, William Foster, Sarah Picker, (wife of Joseph Picker,) Ann Foster, spinster, Elizabeth Foster, spinster, David Foster, Henry Foster, and Mary Foster, spinster, his natural and lawful children and only next of kin, the only persons who

Allegation  
pleading  
fragmentary  
will.

First.

would have been entitled in the distribution of his personal estate and effects in case he had died intestate, and was at the time of his death possessed of a freehold messuage, or inn, in the county of Lincoln, called or known by the name or sign of "The Royal Oak," with a close and paddock and other hereditaments thereunto belonging, then respectively in the occupation of his son, the said Charles Foster, of the value of two thousand eight hundred pounds, or thereabouts; also of the house wherein he, the said deceased dwelt, and of other freehold property in the said county of Lincoln, and in the said city of Lincoln, of the value of five thousand four hundred pounds, or thereabouts; also of a leasehold estate in the said county of Lincoln, of the value of one thousand pounds, or thereabouts, and of personal property to the amount of two thousand pounds, or thereabouts; and the party proponent doth further allege and propound that the said deceased in his lifetime advanced to, or for the use of his son, the said Charles Foster, on various occasions, divers sums of money amounting in the whole to the sum of five hundred pounds, or thereabouts; and this was, &c.

Second.

That the said deceased, who had for some days before been unwell, was, on a day happening in the beginning of the said month of June, 1822, advised by Robert Swan, his solicitor, and Joseph Swan, his surgeon, to make a will, to which he, the said deceased, replied, that he intended to do so, but that he could not give complete instructions for the same until certain undivided estates then belonging to him, the said deceased, and his brother Thomas Foster, as joint tenants, should be divided and held by each in severalty.

And the party proponent doth further allege and propound that shortly afterwards instructions were given by the said deceased and the said Thomas Foster to John May Bromehead, as solicitor to the said Thomas Foster, and to the said Robert Swan, as solicitor for the said deceased, to prepare deeds for the partition of the said estates ; that the said deceased several times afterwards conferred with them respecting the said deeds, and gave directions that they should be completed as soon as might be, and on other occasions, happening in the said month of June, conversed with the said Robert Swan on the subject of his will, but on such last-mentioned occasions declared that he could not give to the said Robert Swan final instructions for the same until he had spoken to his said brother on the subject thereof, and until the said estates were partitioned, or he, the said deceased, on the said occasions expressed himself to the above or the like effect ; and was at and during all and singular the premises of perfect sound mind, memory, and understanding ; and this was, &c.

That on or about the 13th day of the said month of <sup>Third</sup> June, 1822, the said deceased called, in company with the said Thomas Foster, his brother, at the office of the said John May Bromehead, situate in the close of Lincoln, in the city of Lincoln, and they, the said deceased and his said brother, then gave final instructions to the said John May Bromehead relative to the partition of the said undivided estates mentioned in the next preceding article of this allegation. That the said deceased upon the said occasion, amongst other things, informed the said John May Bromehead that he intended making his will as soon as the deeds of partition

were executed, and that he had spoken to Mr. Swan, (thereby meaning and intending the said Robert Swan,) his solicitor, about it; that he should leave his wife the house he lived in for life, and a sufficient annuity out of his real estates to make her comfortable; that he had not quite made up his mind as to what proportion of his property he should leave to each of his children, but that he rather thought of giving Thorp and Haddington, (thereby meaning and intending certain estates, then the joint property of him, the said deceased, and his brother, the said Thomas Foster, and intended upon such partition to become the sole property of him, the said deceased,) to his son, who was then intended to be a farmer, (thereby meaning and intending Henry Foster, one of the sons of the said deceased,) charged with the payment of some money, but the amount he had not then determined upon; or he, the said deceased, on the occasion expressed himself to the above or the like effect, and was at and during all and singular the premises of perfect sound mind, memory, and understanding; and this, &c.

Fourth.

That about half-past ten o'clock on the morning of Wednesday, the 26th day of the said month of June, 1822, being the day of his death, the said deceased came to the office of the said John May Bromehead, for the purpose of executing the deeds of partition of the undivided property of himself and his said brother, hereinbefore particularly mentioned, agreeably to an appointment previously made by him for that purpose; and that the said deeds, after being read over to or by the said deceased, were accordingly executed by him and the other parties thereto; that the said deceased on the said occasion remained two hours, or thereabouts, at



the office of the said John May Bromehead, and talked and discoursed rationally and sensibly, as well with respect to the contents of the said deeds as on other subjects, and was at and during all and singular the premises of perfect, sound, and disposing mind, memory, and understanding, and was not considered by himself or others to be in any danger whatever, although he was and had been ill for some days before; and this, &c.

That the said deceased, after he had executed the Fifth. deeds of partition in the next preceding article particularly mentioned, rode on horseback from the office of the said John May Bromhead to his own house; and the party proponent doth further allege and propound that about one o'clock of the said 26th day of June, Joseph Swan, the medical attendant, having called upon and seen the said deceased, found him very ill; and he then apprized the said Ann Foster, (party in this cause,) that he thought the said deceased was in danger. That by her desire the said Joseph Swan left directions at the office of the said Robert Swan, the solicitor of the said deceased, that Joseph Cooke, one of the clerks of the said Robert Swan, should go to the house of the said deceased to make his will, as soon as he, the said Joseph Cooke, came back; he, the said Joseph Cooke, being at that time absent from the said office. That such directions for the attendance of the said Joseph Cooke were given in consequence of the absence of the said Robert Swan from Lincoln; and this, &c.

That accordingly the said Joseph Cooke, about five Sixth. o'clock in the evening of the said 26th day of June, 1822, went to the house of the said deceased, whom he found ill in bed, and he then informed the said

deceased that he had been sent by the said Joseph Swan for the purpose of making his will, or to that effect. That the said deceased, not then considering himself in immediate danger, was at first desirous of delaying to make his will until the return of the said Robert Swan, who, as the deceased well knew, was expected to return to Lincoln in about a fortnight from that time, and the said deceased then gave as a reason, that he, the said Robert Swan, knew the state of his affairs and the purport of his testamentary intentions, though, he said, he had not given the said Robert Swan any instructions in writing for his will. That the said Joseph Cooke, believing the said deceased to be in danger, advised him to be prepared for the worst, whereupon he, the said deceased, determined then to make his will, and accordingly, having a mind and intention to make and execute his last will and testament in writing, and thereby to dispose of his estate and effects, proceeded to give the said Joseph Cooke instructions for his will, the purport of which he, the said Joseph Cooke, immediately, in the presence of the said deceased, reduced into writing. That the said deceased having on the said occasion, amongst other things, declared his intention of bequeathing an annuity to his son, William Foster, who had had a paralytic attack, and the said Joseph Cooke having asked the said deceased on what property he would have the same secured, he, the said deceased, said that he wished to consult his brother on the subject, and desired that his said brother might be sent for, which was accordingly done. That the said Thomas Foster, the brother of the said deceased, having soon after come into the bedroom of the said

deceased, he, the said deceased, still continuing of sound mind, conversed for some time with his said brother on the subject of his will and the disposition he meant thereby to make of his property, and recapitulated the instructions he had, as aforesaid, given to the said Joseph Cooke for the same, and gave further instructions for his will, which the said Joseph Cooke immediately reduced into writing in the presence of the said deceased. That the said deceased, amongst other things, and in answer to a question put to him by the said Thomas Foster, declared that he had not exactly calculated the value of the whole of his real and personal property, and requested the said Thomas Foster and Joseph Cooke to go down stairs and calculate the exact amount thereof. That they, the said Thomas Foster and Joseph Cooke accordingly left the bedroom of the said deceased, and calculated the amount of the property of the said deceased, and then returned to the said deceased's bedroom, and informed him thereof. That he, the said deceased, still continuing of sound mind, concurred in such calculation, and requested the said Thomas Foster and Joseph Cooke to go down stairs again for the purpose of considering in what manner the several annuities he intended to bequeath should be charged, and his property be fairly divided, adding, that he felt in want of air, and would put on his clothes and walk out, and would afterwards either come to them, the said Thomas Foster and Joseph Cooke, or send for them; and he, the said deceased, and the said other persons, on the said occasion, expressed themselves in words to the above or the like effect; and the party proponent doth further allege and propound, that he, the said deceased,

during all and singular the premises, talked and discoursed rationally and sensibly, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of giving instructions for his will, or of doing any other serious act of that or the like nature, requiring thought, judgment, and reflection; and this, &c.

Seventh.

That the said Thomas Foster and Joseph Cooke having, agreeably to the request of the said deceased, as mentioned in the next preceding article of this allegation, gone into another room of the said deceased's house, and having there fully considered in what mode the testamentary intentions of the said deceased might be best carried into effect, and having made certain alterations in the instructions which the said Joseph Cooke had so as aforesaid received from the said deceased and taken down in writing, the said Thomas Foster stated to the said deceased, who was then walking, dressed, in his garden or yard, the effect of such alterations, and what would be the purport of the will of the said deceased, if drawn according thereto. That the said deceased, still continuing of sound mind, memory, and understanding, fully understood and approved thereof, and desired that his will might be immediately prepared agreeably thereto; and the party proponent doth further allege and propound that the said deceased, during all and singular the premises, talked and discoursed rationally and sensibly, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of giving, or of understanding and approving of, instructions for his will, or of doing any other serious or rational act of that or the like nature requiring thought,

judgment, and reflection. That the said Thomas Foster then informed the said Joseph Cooke, that the said deceased fully approved of the alterations made in the original instructions given by the said deceased for his will, and left the house of the said deceased for the purpose, as he stated, of procuring a sheet of paper on which the said will might be written; and this, &c.

That very shortly after the said Thomas Foster had Eighth. left the house of the said deceased, as mentioned in the next preceding article of this allegation, he, the said deceased, walked up stairs to his bedroom, became worse, and fainted away. That the said Joseph Cooke, being very much alarmed thereat, went to the house of the said Thomas Foster to inform him thereof. That the said Thomas Foster immediately returned with the said Joseph Cooke to the house of the said deceased, and the said Joseph Cooke, pursuant and agreeably to the instructions which had been so as aforesaid given by the said deceased, began to draw up and reduce into writing the very will, marked A, now remaining in the registry of this court, beginning, ending, and subscribed as aforesaid, pleaded and propounded in this cause as and for the last will and testament of the said deceased. That the said Joseph Swan, the surgeon aforesaid, whilst the said Joseph Cooke was writing the same, several times passed from the bedroom of the said deceased into the room wherein the said Joseph Cooke was sitting, and being well aware of the danger of the said deceased, urged the said Joseph Cooke to finish the said will as soon as possible. That the said Joseph Cooke accordingly continued to write the said will with great expedition, compressing the same as much as he could, until he was informed by the said Joseph Swan

that, unless what was then written of the said will was executed, he, the said deceased, would die before it could be finished, or to that effect, whereupon the said Joseph Cooke abruptly concluded the said will, and carried it into the room of the said deceased for execution ; and this, &c.

Ninth.

That the said Joseph Cooke having carried the said will, marked A, pleaded and propounded in this cause as the last will and testament of the said deceased, into the said deceased's bedroom, as mentioned in the next preceding article of this allegation, and having informed the persons present, or some of them, that another witness would be necessary to attest the said will, and Mr. Joseph Wheatley, one of the subscribing witnesses to the will, having been sent for, he, the said deceased, well knowing and understanding the contents of the said will, and that the same were in conformity with the instructions he had given for the same, so as aforesaid altered by the said Thomas Foster and Joseph Cooke, and afterwards approved of by him the said deceased, and liking and approving of the same as and for his last will and testament, in testimony of such his good liking and approbation, did, on or about the said 26th day of June, 1822, set and subscribe his name and affix his seal thereto, and did publish and declare the same as and for his last will and testament, in the presence and hearing of divers credible persons, three of whom, in his presence, at his request, and in the presence of each other, did severally set and subscribe their names thereto, as witnesses of the due execution thereof ; and the party proponent doth further allege and propound that he, the said deceased, did give, devise, bequeath, dispose, and do, in all things as in the

said will is contained, and was, at and during all and singular the premises, of perfect and sound mind, memory, and understanding, and well knew and understood what he said and did, and what was said and done in his presence, and was fully capable of making and executing his last will and testament, and of knowing and understanding the contents thereof, and of doing any other serious or rational act, of that or the like nature, requiring thought, judgment, or reflection; and this, &c.

That immediately after the said deceased had so made and executed his last will and testament in writing, as mentioned in the next preceding article of this allegation, the said Joseph Cooke proceeded to draw up and reduce into writing, the very codicil, marked B, now remaining in the registry of this court, beginning and ending as aforesaid, pleaded and propounded in this cause as and for a codicil to the said last will and testament of the said deceased, intending thereby to explain the contents of the said will, and more distinctly and at large to express the testamentary intentions of the said deceased: That he, the said Joseph Cooke, continued writing the same with as much expedition as he could use, until he was informed that the said deceased was dead, whereupon he immediately ceased writing the same; and the party proponent doth allege and propound that the said codicil was drawn up in exact conformity with the last testamentary intentions of the said deceased, and that he, the said deceased, would have executed the same if he had not been prevented by the act of God. That the said will and codicil were, immediately after the death of the said deceased, read over in his house by the said

Tenth.

Joseph Cooke, in the presence and hearing of the said Charles Foster, the son of the said deceased, and of other persons, and were delivered by the said Joseph Cooke to the said Thomas Foster for safe custody; and this was, &c.

Eleventh.

That on Saturday, the 29th day of the said month of June, shortly after the funeral of the said deceased, the said will and codicil propounded in this cause were read over by the said Thomas Foster, in the presence and hearing of the said Charles Foster and others, and he, the said Charles Foster, requested that the said will and codicil might be given to him, for the purpose of his reading them, whereupon the said will and codicil, with the original paper of instructions so as aforesaid taken by the said Joseph Cooke from the said deceased folded up therein, were given to the said Charles Foster, who shortly afterwards abruptly left the room where the said family were assembled, taking the said will, codicil, and instructions with him, and soon afterwards attempted to destroy the said will, codicil, and instructions, by tearing the same into pieces and scattering the fragments thereof; and the party proponent doth further allege and propound that the said Charles Foster having been afterwards in the course of the day asked for the said will, codicil, and instructions, he, the said Charles Foster, declared that he had left the same either on the chair in which he had sat in the said room or elsewhere, or then expressed himself to that or the like effect, whereupon a diligent search was made for the said will, codicil, and instructions, but the same, or any of them, could not then be found; and this, &c.

Twelfth.

. That on the following day, to wit, Sunday, the 30th day of the said month of June, divers parts or frag-



ments of the said will, codicil, and instructions were found scattered in several closes or fields adjoining the river Witham, near the house in which he the said deceased died. That all the said fragments were immediately collected, and all the parts and fragments of the said will and codicil were, on or about the 7th day of July, 1822, pasted on two several sheets of paper in manner and form as the same now appear; and that he, the said Joseph Cooke, shortly afterwards copied out the said fragments of the said will and codicil, filling up from memory and recollection such parts as could not be found, which said parts so filled up are underscored, the said copies being now respectively hereunto annexed, marked with the letters C and D; but that the said original instructions for the said will and codicil, so as aforesaid written by the said Joseph Cooke, having been written very close, and in a very small hand, on both sides of a piece of paper, and but few fragments thereof having been found, the same could not be pasted or put together in like manner; and the party proponent doth further allege and propound that the said paper, partly underscored, hereunto annexed, marked C, contains the whole purport and effect of the true and original last will and testament which was so executed by the said deceased, as pleaded in the ninth article of this allegation, and afterwards read over by the said Joseph Cooke in the presence and hearing of the said Charles Foster and others, as mentioned in the tenth article hereof, and afterwards, to wit, on the 29th day of the same month of June, read over by the said Thomas Foster in the presence and hearing of the said Charles Foster and others, as mentioned in the eleventh article hereof, save and except that the names of Ann

Foster and Richard Dixon, in the said paper writing respectively mentioned, are therein, by mistake, written Sarah Foster and John Dixon; and that the said paper writing, also partly underscored, hereunto annexed, marked D, contains the whole purport and effect of the true and original codicil to the said will, so written by the said Joseph Cooke, and read over by him on the said 26th day of June, in the presence and hearing of the said Charles Foster and others, as mentioned in the said tenth article hereof, and afterwards, to wit, on the said 29th day of June, read over by the said Thomas Foster in the presence and hearing of the said Charles Foster and others, as mentioned in the said eleventh article of this allegation, save and except that the name of the said Richard Dixon is therein, also by mistake, written John Dixon; and this, &c.

Thirteenth. That all and singular the premises were and are true, and so forth.

*Allegation pleading Execution of a Codicil and annexing Official Copy.*

Allegation  
pleading exe-  
cution of a  
codicil and  
annexing offi-  
cial copy.

First.

That in the months of September and October, 18—, the said Charles Smith, the testator in this cause, deceased, being at the city of Paris, in the kingdom of France, was attacked with a complaint which greatly affected his spirits, and occasioned a general languor and debility in his whole body. That he, the said deceased, whilst so living at the said city of Paris, and being of sound and disposing mind, memory, and understanding, long subsequent to his having made and duly executed his last will and testament in writing, bearing date, &c., having a mind and intention to make

some alteration in, or addition to, his said will, did give directions or instructions for the drawing or writing a codicil to his said will, to \_\_\_\_\_, and, pursuant to such directions or instructions, the said \_\_\_\_\_ drew up and reduced into writing the original codicil to the said last will and testament of the said deceased, bearing date \_\_\_\_\_, now remaining in the hands, custody, or registry of \_\_\_\_\_, King's Counsellor and Notary Public, at the said city of Paris, which said original codicil the party proponent prays may be had, received, and taken as part and parcel hereof, and as if here read and inserted; and after the same was so drawn up and reduced into writing, it was read all over, audibly and distinctly, to the said testator, by the said \_\_\_\_\_, in the presence and hearing of Messrs. \_\_\_\_\_ and \_\_\_\_\_, Notaries of the said city of Paris, and he, the said testator, then well knew and understood the contents of the said codicil, and well liked and approved of the same, and expressed his approbation thereof, in the presence and hearing of the said \_\_\_\_\_; and he, the said testator, did, in and by his said codicil, give, will, bequeath, dispose, and do in all things as in the said original codicil and the aforesaid authentic notarial copy and exemplar thereof is contained, and was, at and during all and singular the premises, of sound, perfect, and disposing mind, memory, and understanding, and well knew and understood what he said and did, and what was read to him, and was very capable of giving instructions for and of making a codicil to his will, and of understanding the nature, contents, and consequence thereof, and of doing any rational act of that or the like nature; and this, &c.

Second.

That the said original codicil to the said last will and testament of the said deceased, pleaded and propounded in the next preceding article of this allegation, and bearing date &c., beginning and ending as aforesaid, is now remaining in the hands, custody, or registry of the aforesaid \_\_\_\_\_, who was and is a notary public residing at the said city of Paris, and an authentic person there, by royal authority duly admitted and sworn; and the party proponent doth further allege and propound the aforesaid copy or exemplar of the said codicil now remaining in the registry of this court, beginning and ending as aforesaid, and annexed to an affidavit of the said \_\_\_\_\_, as to scripts was and is a true and authentic copy or exemplar of the said original codicil of the said testator in this cause, deceased, pleaded and propounded in the next preceding article, and now remaining in the hands, custody, and registry of the aforesaid \_\_\_\_\_, and was and is in all respects agreeable to the same, and so attested to be by the said R——— and B———, who were and are King's Counsellors and Notaries Public, of the said city of Paris, and authentic persons to whose signatures full faith and credit are and ought to be given as well in judgment as without, as appears by the attestation or certificate of the mayor and sheriffs of the said city of Paris, under the seal of the said city, written at the foot or bottom of the aforesaid authentic copy of the said codicil; and this, &c.

### *Allegation.*

Allegation  
pleading exe-  
cution of will  
and codicil,

That the said Francis Newman, the party in this cause deceased, being in North America, where he had for some years before resided, on or about the 26th day

of September, 1817, being of sound mind, memory, and understanding, and having a mind and intention to make his last will and testament in writing, did with his own hand draw and write the same, or did give directions and instructions, for the drawing thereof. That pursuant to such instructions the original last will and testament of the said deceased now remaining in the registry of the Orphans' Court, of Charles County, in North America, was drawn up and reduced into writing and carefully read over to the said testator, who well knew and understood the contents thereof, and in testimony of such his good liking and approbation he did, on or about the day of the date thereof, duly sign, seal, publish, and declare the same as and for his last will and testament in the presence and hearing of several credible witnesses, three of whom, at his request, and in his presence and in the presence of each other, set and subscribed their names as witnesses thereto. That the said testator appointed the said A. B., sole executrix thereof, and did further give, will, bequeath, dispose, and do in all things as in the said will is contained ; and he the said deceased at the several times of the giving instructions for the drawing and making of the said will and at the time of the same being read over to or by him, and of his signing, sealing, and publishing the same as and for his last will and testament, was of sound and perfect mind, memory, and understanding, and capable of making and executing a will or of doing any other serious or rational act of that or the like nature, requiring thought, judgment. and reflection ; and this was, &c.

and annex-  
ing office  
copies.

First.

That the said Francis Newman, the party in this cause, deceased, still continuing of sound mind, memory,

Second.

and understanding, and having a mind and intention to make a further addition to the said will pleaded and propounded in the next preceding article of this allegation, did, on the \_\_\_\_\_, with his own hand, write, or did give directions or instructions for the drawing or writing thereof, and, pursuant to such directions or instructions, the very paper writing now remaining in the said registry of the Orphans' Court, and bearing date \_\_\_\_\_, and purporting to be a codicil to the said last will and testament of the said deceased, and beginning, ending, and subscribed as aforesaid, was drawn up and reduced into writing, and afterwards carefully read over to and by the said deceased, who well understood the contents and approved thereof, as a codicil to his said will; and, in testimony of his good liking and approbation, on or about the said \_\_\_\_\_, being the day of date thereof, set and subscribed his name thereto in manner as therein now appears; and he, the said testator, did, in and by his said codicil, give, will, bequeath, dispose, and do in all things as is therein contained; and was at and during all and singular the premises of sound and disposing mind, memory, and understanding, and well knew and understood what he said and did, and was capable of making a codicil, or of doing any other serious or rational act of that or the like nature requiring thought, judgment, and reflection; and this, &c.

Third.

That the said Francis Newman, after the premises mentioned in the next preceding article, departed this life, to wit, on or about \_\_\_\_\_. That after his death, the aforesaid original will and codicil of the said deceased were deposited in the registry of the Orphans' Court, of Charles County, in Maryland aforesaid, where

the same now respectively remain; and a probate of the same was duly granted by the judge or other competent authority of the said court, to the said A. B., the sole executrix named in the said will, who was first duly sworn to the truth of the said will and codicil, and at such time, also, one of the subscribing witnesses to the said will, and one of the subscribing witnesses to the said codicil, were duly sworn as to the due and faithful execution of the said will and codicil by the said deceased, as in and by the acts and records of the said court, on reference being thereto had, will more fully appear; and this, &c.

That in supply of proof of the premises mentioned Fourth. and set forth in the next preceding article, and to all intents and purposes in the law whatsoever, the party proponent doth exhibit, hereto annex, and pray to be here read and inserted and taken as part and parcel hereof, a true and authentic copy of the said last will and testament, with one codicil thereto of the said deceased, together with authentic copies of the depositions of the said witnesses thereto, as pleaded in the next preceding article of this allegation, now remaining in the registry of this court, annexed to an affidavit as to scripts duly made and sworn to by , parties in this cause; and the party proponent doth allege the same to be true copies of the said last will and testament and codicil thereto of the said deceased, and of the depositions of the subscribing witnesses to the said will and codicil as aforesaid, now remaining in the registry of the said Orphans' Court of Charles County aforesaid; and that the contents thereof were and are true; and that the same is subscribed by and with the proper hand of Mr. Humphery Barnes, the registrar of wills

of the said court: and that all things were so had and done as therein contained; and this was, &c.

When the evidence has been taken on the first allegation, and publication prayed, the opponent of the will files a responsive allegation, pleading circumstances in refutation of its validity or genuineness. The peculiar character of these pleas necessarily varies indefinitely, but the general principles of law, on which the legal effect of a will or codicil can be controverted are comprehended under the following heads; viz., incapacity of testation, from imbecility or insanity, (partial or absolute;) coercion, and undue influence; fraud, or forgery (*a*).

Informal execution under 1 Vict. c. 26, (An Act for the Amendment of the Laws with respect to Wills,) or the law of foreign domicile (*b*) will equally offer occasion for controversy, but are not so necessarily the subject of a plea.

These various responsive pleas may be illustrated by the following precedents:—

### *Responsive Allegation.*

Responsive  
Allegation.

First.

That George Acland Barbor, Esquire, the deceased in this cause, being of the age of thirty-nine years, and whilst travelling for pleasure on the continent of Europe, departed this life at Frankfort-on-the-Maine, on

(*a*) *Higginson v. Colcot*, Lee's R. vol. 1, p. 138. *Littleson* (by her guardian) *v. Clark*, Lee's R. vol. 2, p. 229. *Brouncker v. Brouncker*, Phill. R. vol. 2, p. 57. *Groom and Evans v. Thomas and Thomas*, Hagg. R. vol. 2, p. 423. *Dew v. Clarke and Clarke*, Add. R. vol. 1, p. 279, and vol. 3, p. 79. (*b*) *Curling v. Thornton*, Add. R. vol. 2, p. 6.



or about the 7th day of July, 1839, a bachelor, without parent, brother, sister, nephew, niece, uncle, or aunt, leaving behind him the said William Arundell Yeo, party in this cause, his lawful cousin-german and only next of kin, the sole person entitled to his personal estate and effects in case he had died intestate; that the deceased left behind him at his death, personal estate and effects of the value of between £3,000 and £4,000, and real estate of the gross annual value of £4,400, but burdened with annuities and other incumbrances amounting to the sum of £1,900 per annum; and this, &c.

That very shortly after the event took place, the fact of the deceased's death became known and was notorious at Barnstaple, where William Gribble, the agent and solicitor of the said Anne Melton, now Mackenzie, and the said Tom Dight Mackenzie, was resident; that the body of the said deceased was interred in the burial-place of his family at Fremington, near Barnstaple aforesaid, on Monday, the 22d day of the said month of July, and the death of the said deceased was, prior to, or very shortly after, the said 22d day of July, communicated or otherwise became known to the said Anne Melton, now Mackenzie, and the said Tom Dight Mackenzie, who were at such time resident at Exeter, and to the said William Gribble, all, some, or one of them; and this, &c. Second.

That from about the year 1822 till the year 1837, Mr. William Law, then a solicitor at Barnstaple, and from the month of May, 1832, till the deceased's death, Mr. Thomas Hooper Law, the nephew, and for some years the partner of the said Mr. William Law, were the confidential solicitors of the said deceased, and with Third.

them the said deceased was in the constant habit of friendly communication, and unreservedly consulting upon his private affairs and interests of the most secret nature, and during the said period would not transact any legal business, or execute or sign his name to any legal document, without the advice and concurrence of the said William Law and Thomas Hooper Law, or of one of them; that the deceased, who kept hounds, and was fond of and much addicted to field and other rural sports, was wholly ignorant of law and its forms and phraseology, would never serve on the grand jury, and, though in the commission of the peace, would never act as a magistrate, or as a commissioner or trustee in any public trust in his county; and this, &c.

Fourth.

That on the 15th day of October, in the year 1830, the said deceased duly made and executed his last will and testament in writing, (now remaining on record in the registry of this court,) which had been prepared for him by Mr. William Law, in the next preceding article mentioned, and thereby, after charging certain annuities and legacies to different individuals therein named, he gave, devised, and bequeathed the whole of his real and personal estates to the said William Arundell Yeo, for and towards whom he had at all times entertained, expressed, and evinced, and to the time of his death continued to entertain, express, and evince the greatest regard and affection, and unreserved confidence; and this, &c.

Fifth.

That about the year 1826, the said deceased formed an illicit connexion with A—— M—— S——, the daughter of a respectable bookseller residing in Barnstaple, and previously, as the deceased frequently declared, of virtuous life and irreproachable character; that the

said deceased cohabited with her during several months of each year, which were mostly spent in travelling abroad, on which occasions the said A—— M—— S—— passed as the deceased's wife, and bore the name of Barbor; that the said A—— M—— S—— was so living with and passing as the wife of the said deceased at his death; that by her the said deceased had two children, viz., a son born in the month of January, 1829, who died an infant in arms several years since, and a daughter born in the month of February in the year 1839, who was and is called by the name of Eliza Barbor, and who is now living; that such children were constantly owned, acknowledged, and spoken of by the said deceased as his children, and were so reputed to be; that the said deceased at all times evinced great affection and regard for the said A—— M—— S——, and also for his said daughter by her, the said Eliza Barbor; and by his bond bearing date the 16th day of September, 1828, and prepared by the said William Law, he settled upon the said A—— M—— S—— the sum of two hundred pounds per annum during her life, and by his said will bequeathed to her an additional annuity of two hundred pounds per annum for life; and by his said will, he, the deceased, likewise directed the sum of three thousand pounds should be laid out and invested for the benefit of the said Eliza Barbor, his daughter by the said A—— M—— S——; that the said original bond is now in the possession of the said A—— M—— S——; and will be produced at the hearing, if required; and this, &c.

That in part supply of proof of the premises in the Sixth. next preceding article pleaded and set forth the party proponent doth exhibit, hereto annex, and pray to be

here read and inserted, and taken as part and parcel hereof, a certain paper writing, marked A, and doth allege and propound the same to be and contain a true and correct copy of the bond pleaded in the next preceding article; that the same hath been carefully collated with the original and found to agree therewith; that all things were so had and done as therein contained; and that George Acland Barbor therein mentioned as the obligor of the said bond, and George Acland Barbor the deceased in this cause, was and is one and the same person and not divers; and that A—— M—— S——, therein mentioned as obligee, and A—— M—— S——, mentioned in the said next preceding article of this allegation, was and is one and the same person and not divers; and this, &c.

Seventh.

That some time in the year 1834, the said deceased formed an illicit connexion with a person then residing in Barnstaple named Anne Melton, now Mackenzie, (wife of the said Tom Dight Mackenzie, party in this cause, and as pretended, an attesting witness to the pretended codicil propounded in this cause;) that the said Anne Melton at such time supported herself by keeping a day-school for the children of the smaller shopkeepers and other persons in the humbler classes of life at Barnstaple, and also by taking in needlework; that such the connexion of the said deceased with the said Anne Melton, now Mackenzie, was kept up till about the month of May in the year 1838, by the said deceased frequently visiting her at the several houses of Hammond Stevens, of Robert Stevens, and of Besley in Barnstable, where she had lodgings, and occasionally by his clandestinely sleeping with her; and this, &c.

That in or about the month of May, 1838, the said deceased went to Bath, and that upon his return from Bath, to wit, on or about the 22nd day of June, in the said year, he entirely broke off his illicit connexion with the said Anne Melton, otherwise Mackenzie, and that the same was never afterwards renewed; and this, &c. Eighth.

That prior to or during the continuance of the aforesaid illicit connexion between the said deceased and the said Anne Melton, she had become or became acquainted with the aforesaid Tom Dight Mackenzie, a Musician, in poor circumstances, who was, during such connexion, in the frequent habit of paying long visits to and remaining with her alone at her lodgings at Barnstaple and subsequently, as well in as before and after May 1838, boarded in the same house with her; and this, &c. Ninth.

That in or about the month of May 1838, whilst the said George Acland Barbor, the deceased, was, as before pleaded, at Bath, the said Tom Dight Mackenzie wrote and addresed two letters to the said deceased on the subject of his connexion with the said Anne Melton, which letters were sent to his residence at Fremington, but were not received by the said deceased until his return to Fremington, and which two letters the said deceased subsequently sent back to the said Tom Dight Mackenzie; and this, &c. Tenth.

That during the deceased's aforesaid absence at Bath, the said Tom Dight Mackenzie went to a public-house at Fremington, and there made anxious inquiries as to the value of the estates and property of the said George Acland Barbor, and stated that the aforesaid Anne Melton, party in this cause, (to whom he expressed himself to be the friend,) had lost her school through Eleventh.

the means of the said George Acland Barbor, and he, the said Tom Dight Mackenzie, then violently abused the said George Acland Barbor, calling him by the most opprobrious names and epithets, and threatened to take his life if he did not make the said Anne Melton reparation for the injury which he alleged she had sustained through her aforesaid connexion with him; and this, &c.

Twelfth.

That in a day or two after the deceased's aforesaid return from Bath, Charles Herley, Esquire, an old and intimate friend of his, mentioned to the said deceased that there was some story afloat in the town (meaning Barnstaple) about an intrigue of his (the deceased's) with a woman named Melton; upon which the said deceased admitted to the said Charles Herley that he had been connected with the said Anne Melton, and told him that he was going into Barnstaple about a letter he had received from a Mr. Mackenzie (meaning the aforesaid Tom Dight Mackenzie) upon the subject, which letter being one of the letters pleaded and referred to in the next preceding article, the said deceased then produced and read to the said Charles Herley, and the contents of which were to the following effect, viz., "that he, Mackenzie, had formed an engagement with the said Anne Melton, believing her to be virtuous and correct, but that he had discovered that she had been intriguing for some time with the deceased; that his, the writer's, prospects of happiness were destroyed, and he was determined that one or the other should fall;" that the said Charles Herley recommended the said deceased to send back the letter, and should he receive any annoyance from Mackenzie, to place the matter in the hands of the police; and this, &c.

That on Tuesday, the 26th day of June, in the said Thirteenth. year 1838, the said George Acland Barbor called upon the aforesaid Thomas Hooper Law, at Barnstaple, and then informed him of the circumstances of his connexion with the said Anne Melton; that Mr. Mackenzie (meaning the said Tom Dight Mackenzie) had applied to him to make a settlement or provision for her, and that he intended so to do; that the said deceased, after consulting with the said Thomas Hooper Law, instructed him to prepare a bond securing the payment of sixty pounds per annum to the said Anne Melton during her life; that in the course of the interview between the said deceased and the said Thomas Hooper Law on the said occasion, the said deceased observed that Mackenzie, (meaning the said Tom Dight Mackenzie, had written to him a very violent letter upon the subject, threatening to blow his (the deceased's) brains out if he did not make provision for her, and that he (Mackenzie) would blow his own brains out, and also Miss Melton's, if that were not done or to that effect; and the said deceased added, that the said Tom Dight Mackenzie had interfered in the matter as the lover of the said Anne Melton, and represented to him (the deceased) that the school she had kept was broken up in consequence of the reports then prevalent at Barnstaple, of his (the deceased's) connexion with her, and that he wanted the sum of two thousand pounds to be placed in his, the said Tom Dight Mackenzie's, hands for the use of the said Anne Melton, promising to return the same to the deceased at her death; that he, the deceased, had refused to comply with such proposition, and had returned Mackenzie his letter, informing him that he, the said deceased, did not

care a flip of his finger for his threats, or words to that effect; that a bond was in pursuance of such instructions prepared, and on the 26th day of the said month of June executed by the said deceased; and this, &c.

Fourteenth. That on the 28th day of the said month of June, the said George Acland Barbor again called upon the aforesaid Thomas Hooper Law, and informed him that he had agreed to increase the annuity to the said Anne Melton from sixty pounds to eighty pounds, which latter sum was the sum to be actually paid to her; but that at the particular desire of the said Anne Melton, he had agreed to give her a bond for the payment of one hundred pounds a-year, that she might shew it to her friends to satisfy them, but that she had promised him never to take more than eighty pounds a-year, or words to that effect; and the said deceased then gave to the said Thomas Hooper Law the bond which he had executed, as in the next preceding article is pleaded, in which an alteration had been made by the obliteration of the consideration, to wit, the past services of the said Anne Melton, and the alteration of the amount of the annuity of sixty pounds—first, into “Eighty,” and then into “a hundred pounds;” and on the fly-leaf of which was written in the deceased’s handwriting, “I have made some alterations in this bond which are quite correct—G. A. Barbor;” and he desired the said Thomas Hooper Law to prepare another bond for execution, according to the said altered form; that accordingly another bond was prepared by the said Thomas Hooper Law for securing the payment of one hundred pounds per annum to the said Anne Melton during her life, and was duly executed by the said deceased on the 29th day of the said month of June, and is now in the



hands, possession, or custody of the said Anne Melton, now Mackenzie, or of some person on her behalf; and this, &c.

That in part supply of proof of the premises pleaded and set forth in the next preceding article of this Fifteenth. allegation, the party of the proponent exhibits, &c., a paper writing, &c., to be and contain the original bond, which was signed and executed by the said deceased on the 26th day of June, 1838, in the presence of and attested by the said Thomas Hooper Law, as in the thirteenth article pleaded, and which was on the 28th day of said month produced and given, by the said deceased, to the said Thomas Hooper Law, with the several alterations and obliterations therein as pleaded and set forth in the next preceding article, and that the same is now in all respects in the same plight and condition as the same was when so given by the said deceased to the said Thomas Hooper Law, as in such thirteenth article is mentioned; that the interlineation of the words, "the said Anne Melton," and the interlineation of the word "hundred" four times appearing in the said bond, are of the proper handwriting of the said Anne Melton, now Mackenzie, party in this cause, and are so well known and believed to be by divers persons of good faith and credit, who have often seen her write, and thereby and otherwise have come to know and be well acquainted with her manner and character of handwriting; and this, &c.

That very shortly after the occurrence of the circum- Sixteenth. stances pleaded in the fifteenth article of this allegation, the said deceased informed several of his friends and others that he had settled upon the said Anne Melton one hundred pounds per annum for her life, and had got rid of her altogether, adding to the effect that he

did not wish her to be placed in a worse position on account of her connexion with him, and that as she had, through that circumstance, lost the livelihood she had before obtained by her school, he had, by allowing her one hundred pounds a year, given her quite as much as she could ever have made by it; that on its being represented to him that the said Anne Melton had never made a profit of half that amount by her school, the deceased declared, that he had then been grossly deceived, inasmuch as he had been led to believe, by the representations of the said Anne Melton and her friends, that what he had done for her by the said bond would be only equivalent to the loss she had sustained by the breaking up of her school, and that the aforesaid Tom Dight Mackenzie had endeavoured to persuade him, the deceased, to pay, in lieu of an annuity, a sum of money down, but that he had refused so to do, and that the said deceased, on such occasions, and on all subsequent occasions, when speaking to his friends and others of the said Anne Melton, now Mackenzie, in reference to any benefit she was to derive from him, spoke of or referred to the said annuity as the only benefit which she would in any way derive from him or his property; and this, &c.

Seventeenth. That during the months of July and August, in the said year 1838, the said deceased several times, and among other times, on the 9th day of the said month of July, visited the aforesaid William Law, then residing at Instow, about three miles from Fremington, and on some of such occasions spoke to him in the most unreserved and confidential manner of the connexion he had with the said Anne Melton, of its having been broken off, and of the provision he had as aforesaid

made for her; but neither on those nor any other occasion, up to his death, did the deceased ever mention or intimate to the said William Law, or give the said William Law any reason to suspect, that he had given or intended to give to the said Anne Melton any legacy or bequest by his will or codicil, or that he had made or would make any further or other provision for her; and this, &c.

That in or about the month of August, in the said Eighteenth. year 1838, the said Anne Melton was married to the aforesaid Tom Dight Mackenzie; that the said parties at such time, and for some months afterwards, resided at Barnstaple; that prior to the month of November, in the said year, the said George Acland Barbor, the deceased, at the solicitation of the said Anne Melton, now Mackenzie, made her several advances of money, amounting in the whole to the sum of sixty pounds, which he considered as payments on account of the first year's annuity of eighty pounds which he intended to settle, and considered he had settled, upon her, as in the fifteenth preceding article of this allegation is pleaded; that in the said month of November, Mr. William Gribble, a solicitor, practising at Barnstaple, acting on behalf of the said Anne Mackenzie and Tom Dight Mackenzie, having inquired of the aforesaid Thomas Hooper Law in what manner the annuity to the said Anne Mackenzie would be paid, the said Thomas Hooper Law thereupon saw the said deceased, and was informed by him that he, the deceased, had paid to the said Anne Mackenzie several sums of money, amounting to sixty pounds, on account of the first year's annuity; that the said Thomas Hooper Law, having subsequently informed the said William

Gribble that, though the annuity was in the bond expressed to be one hundred pounds, the sum agreed upon between the parties to be paid and received was eighty pounds per annum only, and that the said deceased had paid the said Anne Mackenzie sixty pounds on account of the first year's annuity, the said William Gribble told the said Thomas Hooper Law, that both such circumstances were denied by the said Anne Mackenzie and Tom Dight Mackenzie, his clients; and this, &c.

Nineteenth. That the said deceased having been informed by the said Thomas Hooper Law of the denials of the said Anne Mackenzie and Tom Dight Mackenzie, in the next preceding article pleaded, expressed great surprise and anger thereat, and on or about the 7th day of December, 1838, in the presence of the said Thomas Hooper Law, told the said William Gribble that he had paid Mrs. Mackenzie sixty pounds on account of the first year's annuity, and that she had decidedly promised him that she would not take a larger annuity than eighty pounds a-year, though the bond was expressed to be for one hundred pounds a-year, and that she had wished the bond to be for the one hundred pounds a-year, merely to satisfy or shew to her friends, that they might believe she had one hundred pounds a-year, but that she would never claim it, or words to that or the like effect; that the said William Gribble thereupon said that he would communicate such statement to his clients; and this, &c.

Twentieth. That on the 11th of January, in the year 1839, William Gribble, the younger, the son and clerk of the aforesaid William Gribble, and acting on behalf of the said Anne Mackenzie and Tom Dight Mackenzie,

called upon the aforesaid Thomas Hooper Law, and, notwithstanding the premises, applied for payment of fifty pounds, as the half-year's annuity due on the 25th of December preceding; that the said Thomas Hooper Law on the same day communicated to the said deceased the fact of such application; that the said deceased thereupon expressed great anger and displeasure at the conduct of the said Anne Mackenzie and Tom Dight Mackenzie, and requested the said Thomas Hooper Law to write to the said William Gribble on the subject of the payment on account and as to the amount of the annuity to be paid, and directed that if the payment on account was still denied, and the one hundred pounds a year required, the said Thomas Hooper Law should pay fifty pounds as the first half-year's annuity, taking the receipts of Mr. and Mrs. Mackenzie for the same; he, the said deceased, declaring at the same time, that he only gave up the point because he was unable to prove the agreement and the payment of the money, or words to that or the like effect; that accordingly on the next day the said Thomas Hooper Law wrote, addressed, and sent a letter to, and which letter was duly received by, and is now (if not destroyed) in the possession of the said William Gribble, of the tenor or to the effect following, to wit:

“Barnstaple, 12th January, 1839.

“Re Mackenzie's Annuity.

“Dear Sir,

“You will no doubt recollect the statement which Mr. Barbor made to you on this subject, viz., that it was agreed that the annuity should be nominally one hundred pounds, but in reality only eighty pounds

should be paid or demanded, and that he had paid sixty pounds on account of the first year's annuity; I have therefore to request that you will inform me whether your client really means to require that the annuity shall be paid at the rate of one hundred pounds, and to deny that the sixty pounds have been paid on account.

“ I am, dear Sir,

“ Yours very obediently,

“ THOS. HOOPER LAW.

“ William Gribble, Esq.”

That no written answer was returned to the said letter, but on the same day the aforesaid William Gribble, the younger, called upon the said Thomas Hooper Law, and informed him that the one hundred pounds a-year was required to be paid, and the sixty pounds was denied as being paid in part, Mrs. Mackenzie saying, that the same had been received as a gift; whereupon the said Thomas Hooper Law, pursuant to the aforesaid instructions received from the said deceased, undertook to pay the fifty pounds as the first half-year's annuity, due on the 25th December, 1838, on having the joint receipt of the said Anne Mackenzie and Tom Dight Mackenzie; that accordingly, the said William Gribble, the younger, left the office of the said Thomas Hooper Law, and in a short time returned thereto, bringing with him the joint receipt of the said Anne Mackenzie and Tom Dight Mackenzie for the said sum of fifty pounds, which the said Thomas Hooper Law then paid to the said William Gribble, the younger, for their use; and that on the 26th day of June, 1839, the said Thomas Hooper Law paid a like sum of fifty pounds as the second half-year's annuity, due on the 25th of June,

1839, to the said Anne Mackenzie under the said bond, to the said William Gribble, the younger, and received from him a receipt in the joint names of the said Anne Mackenzie and the said Tom Dight Mackenzie; and this, &c.

That in part supply of proof of the premises mentioned in the next preceding article, the party exhibits, &c., two stamped paper writings, marked C and D, &c., to be and contain the original joint receipts given and signed by the said Anne Mackenzie, party in this cause, and Tom Dight Mackenzie, her husband, as mentioned in the said article; and that all things were so had and done as therein contained; that the names "Anne Mackenzie," set and subscribed to the said exhibit marked C, and the names "Anne Melton Mackenzie," set and subscribed to the said exhibit marked D, were and are of the proper handwriting and subscription of the said Anne Mackenzie, (wife of the said Tom Dight Mackenzie,) formerly Melton, party in this cause; and the initials and name "T. D. Mackenzie," set and subscribed to the said two exhibits respectively, were and are of the proper handwriting and subscription of the said Tom Dight Mackenzie, and the same are so well known and believed to be by divers persons of good faith, credit, and reputation, who know and are well acquainted with them the said Anne Mackenzie and Tom Dight Mackenzie, and have frequently seen them write and subscribe their names to writings, and thereby and otherwise have come to know and be well acquainted with their manner and character of handwriting and subscription; and this, &c.

That from the time of the denials of the said Anne Mackenzie and Tom Dight Mackenzie, respecting the

Twenty-first.

Twenty-second.

amount of the aforesaid annuity, and the payment claimed by the deceased to have been made on account thereof, as pleaded and set forth in the nineteenth preceding article of this allegation, up to the time of his death, the said deceased entertained, expressed, and evinced the most marked aversion towards the said Anne Mackenzie and Tom Dight Mackenzie, calling them by the most opprobrious names, and complaining to his friends and others of their dishonest conduct towards him, at which he expressed himself as greatly exasperated and disgusted, and frequently declared, among other things, to the effect that he agreed to give the said Anne Melton eighty pounds a-year, with which she had expressed herself satisfied; and though the deed was, at her request, made for one hundred pounds, to show to her friends, she had agreed never to demand more than eighty pounds, and that on her going to be married to Mackenzie, he, the said deceased, had at their entreaty advanced them money on account of the annuity, and that afterwards they had had the impudence to assert that he had made them a present of it, and if it were otherwise, of course he, the deceased, had the receipt, or he declared that they had asserted to that or the like effect; and he, the said deceased, frequently complained that they had also claimed the whole one hundred pounds a-year instead of eighty pounds, as agreed; and the said deceased, on many occasions, told his friends and others that he had bound himself to pay to the said Anne Mackenzie one hundred pounds a-year during her life, and therefore that he would; but that he would take good care that he did not pay her one shilling more than he was so bound, or words to that or the like effect; and this, &c.



That in the month of November, in the year 1838, Charles Edward Bernard, Esquire, the younger, who was a very intimate and confidential friend of the deceased, was stopping, (as he frequently did,) on a visit in the house of the said deceased at Fremington, where he remained with him five weeks, or thereabouts, during which time also William Arundell Yeo, party in this cause, was also staying on a visit to the said deceased; that during such visit the said deceased had several confidential conversations with the said Charles Edward Bernard, in one of which, of a more confidential nature, he told the said Charles Edward Bernard that he had made his will, and had left his property to Doctor Yeo, meaning the said William Arundell Yeo; that he had made a provision for A—— M—— S—— of four hundred pounds a-year, and that he had left his daughter, by her, a sum which would give her one hundred and twenty pounds per annum; the deceased also, on the said occasion, stated to the said Charles Edward Bernard, confidentially, many other matters regarding his property, and the disposition of it; his then income, and his probable income if he lived sufficiently long for leases to fall in; he also told him of the allowance he was then making to the said A—— M—— S——, and of that he was making to the aforesaid Anne Mackenzie of one hundred pounds per annum; but the said deceased, though on such occasions conversing in the most unreserved manner with the said Charles Edward Bernard, on his most secret affairs as well as on his testamentary acts, never did, on that or on any other occasion, mention or intimate to the said Charles Edward Bernard, or give the said Charles Edward Bernard the slightest ground to believe or suspect that he had given,

Twenty-third.

or intended to give, to the said Anne Mackenzie any legacy or bequest by his will or codicil, or that he had made, or would make, any further provision for her than that he had as aforesaid made of the aforesaid annuity of one hundred pounds per annum for her life; but, on the contrary, the said deceased did, on the said occasion and on several subsequent occasions, express to the said Charles Edward Bernard his deep regret that he had committed himself, even to that extent, and complained of the conduct of the said Anne Mackenzie and the said Tom Dight Mackenzie, in respect to their demanding payment of the whole annuity of one hundred pounds, and their denial that the sums paid to them by him previous to the 25th December, 1838, were payments on account of such annuity, and the deceased otherwise complained of and spoke with great indignation and displeasure of the said Anne Mackenzie and the said Tom Dight Mackenzie to the said Charles Edward Bernard; and this, &c.

Twenty-fourth.

That in the month of May, in the year 1839, the said deceased went abroad; that from the 22d day of June, 1838, up to the time of his so going abroad, the said deceased, though in the habit of almost daily unreserved and confidential intercourse with the aforesaid Thomas Hooper Law, on no occasion whatever mentioned or intimated to the said Thomas Hooper Law, or gave the said Thomas Hooper Law the slightest ground to believe or suspect that he had given, or intended to give, to the said Anne Mackenzie any legacy or bequest by his will or codicil; or that he had made, or would make, any further provision for her than he had made by the aforesaid annuity of one hundred pounds per annum for her life; but, on the contrary,

the said deceased did frequently, subsequently to the execution of the aforesaid bond securing the same, express to the said Thomas Hooper Law his displeasure and indignation at the conduct of the said Anne Mackenzie and Tom Dight Mackenzie, and his great regret that he had committed himself even to the extent of the said bond ; and this, &c.

That in the month of June, 1839, the said deceased was residing at Frankfort-on-the-Maine with the aforesaid A—— M—— S——, who passed there as his wife, and with their aforesaid daughter Eliza Barbor ; that the aforesaid Charles Edward Bernard, the younger, was at such time at Wiesbaden, and, at the request of the said deceased, communicated to him about the latter end of the said month, some time afterwards went on a visit to the said deceased at Frankfort, and remained with him two or three days, and then returned to Wiesbaden ; that the said Charles Edward Bernard having shortly afterwards received information from the said A—— M—— S—— that the said deceased was very unwell, again went to the deceased at Frankfort aforesaid, and with a slight interval remained with him till he died ; that during such second visit, and shortly prior to his death, the said deceased told the said Charles Edward Bernard that he was conscious of his approaching death, and in reply to questions put to him by the said Charles Edward Bernard, as to whether he had any communications to make, or wishes to express, stated that he had none ; that the said Charles Edward Bernard, on one or more occasions, asked the said deceased whether he had any instructions to send to Fremington or to England, as he was writing to Doctor Yeo, to which

Twenty-fifth.

the said deceased always replied in the negative; and this, &c.

Twenty-sixth.

That about the middle or latter part of the month of August, in the year 1839, the before-mentioned William Gribble, still acting on behalf of the said Anne Mackenzie and Tom Dight Mackenzie, having applied to the aforesaid Thomas Hooper Law, to shew him Mr. Barbor's, (meaning the said deceased's,) will, the said Thomas Hooper Law declined so to do until he had consulted Doctor Yeo, adding that the said will was at such time in the course of being proved, but that he had not yet received the probate from London; that the said William Gribble then informed the said Thomas Hooper Law, that Mrs. Mackenzie, (meaning the aforesaid Anne Mackenzie,) had desired him to make the inquiry, as she wanted to know whether her name was mentioned in the will; upon which the said Thomas Hooper Law expressed his surprise that she could expect it, having been otherwise so handsomely provided for, and informed him that Mrs. Mackenzie's name was not mentioned in the will; and this, &c.

Twenty-seventh.

That probate of the last will and testament of the said deceased (bearing date as pleaded in the fourth preceding article of this allegation) was, on the 27th day of August 1839, granted by the authority of this court to the said William Arundell Yeo, as the sole executor therein named, as by the acts and records of this court, relation being thereto had, will more fully appear; and this, &c.

Twenty-eighth.

That the aforesaid William Arundell Yeo was during great part of the month of July, and of the month of October, and also during the whole of the month of November, in the year 1839, residing at Fremington

House, and on many days during the said periods came into Barnstaple on business or otherwise; that on Monday, the 25th day of the said month of November, the said William Gribble, still acting on behalf of the said Anne Mackenzie and Tom Dight Mackenzie, again applied to the said Thomas Hooper Law, to shew him, the said William Gribble, the will of the deceased, which the said Thomas Hooper Law declined to do, stating, however, that as the will had been proved, it could be seen in the common course at Doctors' Commons; that the said William Gribble then stated that he made the application on behalf of Mrs. Mackenzie, (meaning the said Anne Mackenzie, party in this cause;) and asked if there was any codicil to the deceased's will; to which inquiry the said Thomas Hooper Law replied, there was not, and that he had never heard of any codicil, or to that effect; that the said William Gribble then said, that "there was a codicil; that Mrs. Mackenzie had one in her possession, and that Mr. Mackenzie was a witness to it," or words to that or the like effect, but at the same time refused to state the contents or purport thereof; and the party proponent doth expressly allege and propound, that prior to the occasion of the interview between the said William Gribble and Thomas Hooper Law, in this article pleaded as having taken place on the 25th day of November, in the year 1839, no suggestion was ever made to the said William Arundell Yeo, or to Thomas Hooper Law, his confidential solicitor, or to any person on his or their behalf, that the said deceased had ever made or left behind him any codicil whatever to his aforesaid last will and testament, or any other testamentary paper whatever, bequeathing any legacy to or

in favour of the said Anne Melton, now Mackenzie, or any other testamentary paper whatever, save and except his said last will and testament; and this, &c.

Twenty-ninth.

That from the 25th day of November, in the year 1839, no communication of any kind was had between the said Anne Mackenzie, Tom Dight Mackenzie, or either of them, or between William Gribble, their solicitor, or any person on their behalf, on the one part, and the said William Arundell Yeo, party in this cause, or the aforesaid Thomas Hooper Law, his confidential solicitor, on the other part, in reference to the affairs of the said deceased, until the ninth day of December, in the said year 1839, when the said Thomas Hooper Law received a letter of that date, from the aforesaid William Gribble, acting on behalf of the said Anne Mackenzie and Tom Dight Mackenzie, informing him that Mr. Barbor, by a codicil made in the month of July, 1838, and duly executed and attested, gave to Mrs. Mackenzie a legacy of five thousand pounds, and that the codicil was then deposited in the registry at Doctors' Commons, and that on application to Messrs. Clarkson and Son, the proctors of Mrs. Mackenzie, the same might be inspected, and requesting that Mr. Yeo would take probate of the codicil in question immediately, or with as little delay as the circumstances require, seeing that the legacy was made payable within six months after Mr. Barbor's decease; and this, &c.

Thirtieth.

That in part supply of proof of the premises in the next preceding article mentioned, the party proponent exhibits, &c., paper writing marked E, &c., to be and contain the original letter written, signed, addressed, and sent by the aforesaid William Gribble to, and received by, the aforesaid Thomas Hooper Law, as in

the next preceding article mentioned; that the whole body, series, and contents of the said exhibit, and the subscription thereto, and the superscription thereon, were and are of the proper handwriting, subscription, and superscription of the said William Gribble, and are so well known and believed to be by divers persons of good faith and credit, who have often seen him write and subscribe his name to writings, and are thereby and otherwise well acquainted with his manner and character of handwriting and subscription; and this, &c.

That about five or six years prior to his death the said deceased was struck by paralysis, from the effects of which he never recovered; that thereafter he always used a stick when walking; that notwithstanding the aid of such stick, he frequently, through his aforesaid infirmity, fell to the ground; that though, from the time of his being so struck till his death, the fact of even signing his name caused the said deceased a considerable effort, and for which he made much preparation, he nevertheless wrote and also signed his name in a rapid manner, and of a free style and character; and this, &c. Thirty-first.

That in part supply of proof of the premises in the next preceding article pleaded and set forth, the party proponent exhibits, &c., paper writings, &c.; those marked from No. 22 to No. 25 inclusive, &c., to be and contain four original drafts or cheques for money, drawn by the deceased upon the National Provincial Bank of England, and the exhibits marked from No. 26 to No. 52 inclusive, to be and contain twenty-seven original drafts or cheques for money drawn by the deceased on the West of England and South Wales District Bank, and each and every of Thirty-second.

the said thirty-one exhibits, having the initials and name "G. A. Barbor" subscribed thereto, and that the said thirty-one cheques are the whole of the cheques signed by the said deceased, from and after the 31st day of December, 1837, up to the time of his death, save and except eleven, which, after diligent search and inquiry, cannot be found; and this, &c.

Thirty-third. That the initials and name "G. A. Barbor" set and subscribed to each and every of the exhibits in the thirty-second preceding article pleaded, and the initials and name "G. A. Barbor" set and subscribed twice to the aforesaid exhibit marked B, and also the before-re-cited addition of the words, "I have made some alterations in this bond, which are quite correct," appearing on the said fly leaf of the said exhibit marked B, were and are of the proper handwriting and subscription of the aforesaid George Acland Barbor, Esquire, the deceased in this cause, and are so well known and fully believed to be by divers persons of good fame, credit, and reputation, who well knew and were well acquainted with him, and have often seen him write, and write and subscribe his name to writings, and thereby and otherwise have come to know and be well acquainted with his manner and character of handwriting and subscription; and this &c.

Thirty-fourth. That during the connexion of the deceased in this cause with the aforesaid Anne Mackenzie, formerly Melton, party herein as hereinbefore pleaded, she the said Anne Mackenzie, then Melton, frequently received letters from and written by the said deceased; that during such period she was in the frequent habit of imitating in writing the signatures of many persons who then corresponded with her, but more particularly that



of the aforesaid George Acland Barbor, the deceased in this cause; and on several occasions, when the said Anne Mackenzie, then Melton, has so imitated the signature of the said deceased, she has shown the said imitation to persons who were then present with her, and has asked whether it (meaning the imitation she had made) was not like (meaning the original signature from which she had made such imitation,) and if she the said Anne Mackenzie, then Melton, could not easily forge George's (by which application she was in the habit of calling the deceased in this cause,) name, or words to that or the like effect; and this, &c.

That the words "This is" at the commencement, and the initials and name "G. A. Barbor" at the end or conclusion of the pretended codicil propounded in this cause, by and on the part and behalf of the said Anne Mackenzie, heretofore Melton, and Tom Dight Mackenzie, the other parties herein, are not, nor is any part thereof, of the proper handwriting and subscription of George Acland Barbor, Esquire, the deceased in this cause; and that the said words, initials, and name, are well known or fully believed not to be of the said deceased's handwriting and subscription to and by divers persons of good fame, credit, and reputation, who knew and were well acquainted with him, and have often seen him write, and write and subscribe his name to writings; and thereby and otherwise have come to know and be well acquainted with his manner and character of handwriting and subscription; and this, &c. Thirty-fifth.

That all and singular the premises were and are true, and so forth. Thirty-sixth.

*Responsive Allegation.*

Responsive  
allegation.  
First.

That Peter Rainier, Esquire, the party in this cause, deceased, died on Monday, the thirtieth day of October, one thousand eight hundred and thirty-seven, at the house, No. 9, Lower Grosvenor Street, in the parish of Saint George, Hanover Square, in the county of Middlesex, to which he had been recently before brought from France, as is hereinafter pleaded, a bachelor, of the age of sixty years or thereabouts, leaving behind him Eliza McQueen, wife of James McQueen, Esquire, (Captain in Her Majesty's Fifteenth Regiment of Hussars,) his lawful niece, only next of kin, and heiress at law, the only person who would have been entitled to his estate and effects in case he had died intestate; that at the time of his death he was possessed of, or entitled to, personal property of the amount or value of sixty-five thousand pounds or thereabouts, and of real estate to the amount or value of two thousand pounds or thereabouts, the bulk of both which properties he derived from his paternal uncle, the late Admiral Peter Rainier; and this, &c.

Second.

That the said Eliza McQueen, wife of the said James McQueen, heretofore party in this cause, is the daughter and only child of Rear-Admiral John Sprot Rainier deceased, the brother of the said deceased; that the said deceased had and entertained very great regard and affection for his said brother during his lifetime, and, (so long as he, the deceased, retained possession of his recollection and mental faculties,) great respect and affection for his memory after his death; that the said deceased also had and entertained great regard and

affection for Eliza Rainier, widow, the relict of his said brother, and an annuitant for life named in the said true and original last will and testament of the deceased bearing date the twenty-sixth day of January, one thousand eight hundred and thirty-six, and also for the said Eliza McQueen and James McQueen; and this, &c.

That on or about the twenty-sixth day of January, Third.  
one thousand eight hundred and thirty-six, the said deceased called at the office of Mr. John Gregson, in Bedford Row, taking with him a will or other writing in the nature of a will or a draft thereof, which he had drawn and prepared in his own handwriting, and which he showed to the said solicitor, and requested him to read the same and give him his opinion as to the sufficiency thereof; that the said John Gregson, having perused such will or paper, informed the deceased that it was not altogether technical, or required to be put into better form, or to that effect; whereupon the deceased requested the said solicitor to draw a will, or prepare a will, therefrom and pursuant thereto, and in accordance with the directions and instructions of him, the said deceased, the very paper writing now remaining in the registry of this court, annexed to the affidavit of Ellen Elwyn, the other party in this cause, as to scripts, now marked with the letter C, was drawn up and reduced into writing, and the same, having been approved of by the deceased, was, on or about the twenty-sixth day of the said month of January, one thousand eight hundred and thirty-six, being the day of the date thereof, duly executed by him, the deceased, as and for his last will and testament, in the presence of the several persons whose names are subscribed as witnesses thereto, and

who so set and subscribed their names as witnesses of the due execution of the said will in the presence of him, the deceased, and of each other; and he, the deceased, did, of his said will, nominate, constitute, and appoint the said Charles Deare and Thomas Mayhew, Esquires, executors, and did give, will, bequeath, dispose, and do in all things as is contained in said will; and this, &c.

**Fourth.**

That the said deceased, at some time after the making and execution of the said will, dated the twenty-sixth day of January, one thousand eight hundred and thirty-six, as pleaded in the next preceding article, but when in particular the party proponent is unable to set forth, having discovered that Margaret Mayhew, spinster, was not named as a legatee in such will, and having a mind and intention to bequeath an equal benefit to her, as he had thereby given to her sisters and brother, with his own hand wrote and interlined the name "Margaret Mayhew," between the second and third lines of the said will, and also signed and placed the letters "P. R.," being the initial letters of his name, following the same, in manner and form, as in the said will now appears; and thereby gave and bequeathed to her the legacy or sum of three hundred pounds; which sum he had, by the said will, previously given and bequeathed to each of her said sisters and her brother; and this, &c.

**Fifth.**

That the said deceased, at some time happening after he had inserted the name of the aforesaid Margaret Mayhew as a legatee in his said will, as pleaded in the preceding article, but at what time in particular the party proponent is unable to set forth, drew up and wrote with his own hand a summary or abstract of the contents of the said will, as a memorandum for his

own use, the same being the very paper writing now marked with the letter D, and annexed to the said affidavit of the said Ellen Elwyn, as to scripts; and this, &c.

That the aforesaid name "Margaret Mayhew," and Sixth.  
the said initial letters "P. R., following the same, written and interlined as aforesaid in the said will of the twenty-sixth day of January, one thousand eight hundred and thirty-six, marked C, and also the whole body, series, and contents of the said script marked D, being the aforesaid summary or abstract thereof, were and are of the proper handwriting and subscription of the said Peter Rainier, Esquire, the party in this cause, deceased, and are so well known and believed to be by divers persons of good faith and credit who knew the deceased, and are well acquainted with the manner and character of his handwriting and subscription, from having frequently seen him write, and also write and subscribe his name; and this, &c.

That the said deceased, for many years prior and Seventh.  
until the month of March, one thousand eight hundred and thirty-six, lived and resided in his own house or chambers, situate in the Albany, in the parish of Saint James, Westminster, aforesaid; that prior to the decay of his mental faculties, he was a man of good understanding, and of extensive literary and classical acquirements, particularly on the subjects of botany, painting, antiquities, and the fine arts, and remarkably correct and gentlemanly in his language, manners, and behaviour; and this, &c.

That, in the latter part of the year one thousand Eighth.  
eight hundred and thirty-four, the said deceased fell from his horse, whilst riding in Regent's Park, and such acci-

dent was immediately preceded or followed by a severe attack of apoplexy, which he experienced on that occasion, and which caused a paralytic affection of his right arm and leg and right side; that, save as to such paralytic affection, which was never removed, he recovered from the immediate effects of the said attack, but was much injured thereby in his general constitution and health; that the said attack produced disease of the brain and cerebral system of the said deceased, in consequence of which, at a later period, his bodily and mental powers became gradually impaired, until eventually he, the said deceased, became wholly incapable of managing himself or his affairs, or of performing any serious or rational act requiring thought, judgment, and reflection, as is hereinafter more particularly pleaded; and this, &c.

Ninth.

That, after the marriage of the said Ellen Elwyn to the said William Brame Elwyn, which took place in or about \_\_\_\_\_, the said deceased, who had been previously acquainted with the said William Brame Elwyn, was introduced to the said Ellen Elwyn; that she, the said Ellen Elwyn, endeavoured as much as possible to ingratiate herself with the said deceased, and paid him very much court and attention, and very much improved her acquaintance and familiarity with him, of which she eventually took advantage, when he was in an infirm and declining state of health, to induce him to reside with her, and to be subject to her influence and control, as is hereafter more particularly pleaded and set forth; and this, &c.

Tenth.

That when, as aforesaid, the said deceased gave up his residence in the Albany, he took, and at a considerable expense furnished, a house in Dean Street,

Park Lane, in the county of Middlesex, where, however, he only resided for the space of three or four months or thereabouts, when he went to visit the said William Brame Elwyn and Ellen Elwyn at Boulogne-sur-Mer, as hereafter pleaded; that the said house and establishment of the said deceased in Dean Street were nevertheless continued and kept up at his expense for some time after he went to Boulogne, and the said house was not finally given up or disposed of on the part of the deceased until in or about the month of July last past, as hereinafter is more particularly pleaded and set forth; and this, &c.

That in or about the said month of June, one thousand eight hundred and thirty-six, the said deceased, at the invitation and by the persuasion of the said Ellen Elwyn and her husband, accompanied them, as for a visit, to Boulogne-sur-Mer, in France, where they for some time previously had had a residence; that he, the deceased, did not, however, return to England, but, by the persuasion and solicitation of the said Ellen Elwyn and her husband, was induced to remain at Boulogne, and he continued to live and reside there until the month of October last, when he was brought to London, as after pleaded, save that in or about the month of May last the said Ellen Elwyn took him to Paris, where he was for the space of six weeks or thereabouts; that the only other inmates of the house, where the deceased was, kept at Boulogne, besides children and servants, were the said Ellen Elwyn, the said William Brame Elwyn, her husband, and Elizabeth Rees, her sister, and a young female who passed by the name of Susan Rees and as the niece of the said Ellen Elwyn; and this, &c.

Eleventh.

Twelfth.

That shortly after the said deceased was at Boulogne, the said Ellen Elwyn by degrees contrived to get into her own hands the management of all his pecuniary transactions, and took upon herself the direction of all his affairs, at first obtaining his consent and sanction thereto upon each particular occasion, but latterly without any reference whatsoever to him; that she opened all letters addressed to him, and answered and kept or destroyed the same as she thought proper; and the party proponent doth further allege and propound that during the time that the said deceased was in France, and afterwards in London, until his death, she, the said Ellen Elwyn, procured and obtained payment to be made to her of very large sums of money belonging to the deceased, and which she spent or appropriated to her own use without rendering any account thereof to the said deceased; that during the last year of the deceased's life she obtained and appropriated four thousand pounds or thereabouts, belonging to him, of which one thousand one hundred and fifty pounds, or thereabouts, were obtained by her within one month of his death; and this, &c.

Thirteenth.

That the said deceased carried the aforesaid will of the twenty-sixth day of January, one thousand eight hundred and thirty-six, with him to Boulogne, and for some time after he was there; and, so long as he retained possession of his reason or understanding, he was very careful and particular as to the custody thereof, and kept the same in a writing-desk or drawer, of which he retained the key, attached to a string, which he always wore about his neck, and of which he was very tenacious, and he was annoyed and displeased whenever the said Ellen Elwyn looked into or endeavoured to inspect



or ascertain the contents of such drawer or desk, which she frequently endeavoured and wished to do; and the party proponent doth further expressly allege and propound, that some time after the said deceased was at Boulogne, she, the said Ellen Elwyn, obtained access to the said will, and became aware of all the contents and dispositions thereof; and this, &c.

That on a day happening in or about the month of Fourteenth. April, one thousand eight hundred and thirty-seven, the said Ellen Elwyn informed Robert Sandum, Susan Sandum, (wife of the said Robert Sandum,) and Alice Paraman, spinster, respectively in the service of the said deceased, and legatees named in the paper writing purporting to be a codicil to the said will of the twenty-sixth day of January, one thousand eight hundred and thirty-six, now remaining in the registry of this court, and annexed to the said affidavit of scripts of the said Ellen Elwyn, and marked E, or some or one of them, that the said deceased had made a codicil, thereby meaning and referring to the said paper writing; and she then, or on some other occasion, showed the said paper writing to them, the said Robert Sandum, Susan Sandum, and Alice Paraman respectively, and desired them to read it, which they severally did, and the said Ellen Elwyn then declared, "That she was very glad to think that she had got the said deceased to leave his servants something, and that she should keep the said codicil, and that if Mr. Rainier (meaning the deceased) remained with her, all of them, the said servants, would get their money, but if he did not, she would not answer for it;" or she, the said Ellen Elwyn, then and also on other occasions expressed herself to the same effect; and this, &c.

Fifteenth.

That about the end of the year one thousand eight hundred and thirty-six, or the beginning of one thousand eight hundred and thirty-seven, the symptoms of the disorder of the brain with which the deceased was affected became more marked and decided, and such disorder, and the imbecility and impairment of the mental faculties consequent thereon, very much increased, and continued so to do progressively until he was reduced to a state of the most deplorable helplessness and infirmity, insomuch that when he the deceased was taken to Paris as aforesaid, and for some time prior thereto, he had not the slightest use or command over any of his limbs, and was unable to perform any act whatever for himself, and his powers of speech and articulation were to a considerable degree impaired, and he was quite unable to sustain any conversation in relation to his common wants and the merest trifles; that his mental faculties were also greatly injured and impaired, and that in and before the month of September, one thousand eight hundred and thirty-seven, he appeared to be, and was sunk into, a state of complete imbecility and childishness approaching to idiocy, and was quite incompetent to transact any business, or do any act of a serious import, requiring thought, judgment, and reflection, and he was in the power and under the control and undue influence of the said Ellen Elwyn and her husband, and was altogether unable to resist importunity and the undue influence of designing persons; and this, &c.

Sixteenth.

That some time before he went to Paris, and also whilst there, and subsequently until his death, he the deceased continually acted in a strange, foolish, and childish manner, and by his conduct plainly evinced

impaired intellect and the loss of sense and reason, and he was subject to delusions, under which he acted; that he would sometimes be and remain in a state of abstraction and dejection, and would not take notice of any person or object; at other times he would, without any cause, burst into fits of immoderate laughter; and he was in the habit of swearing violently, cursing the Deity, himself, and all mankind, wishing himself in hell, and breaking out into other impious execrations; that he was also in the habit, particularly at night, of hallooing and screaming out, and making loud unmeaning noises, insomuch that he was heard at a considerable distance, though he was constantly attended, by night as well as by day, by a nurse or some other servant, and that when questioned on the cause of having done so, he would look vacantly, and was never able to give an intelligible answer, or he would positively deny that he had at all called out; that he also frequently, and as well by night as by day, called out for his nurse or attendant, or rung violently a bell which was placed in his reach, and would afterwards positively deny he had called out or rung, and would with shocking imprecations and language abuse and revile his said servants, and then talk in the most silly and incoherent manner; that the deceased also appeared to be and was totally incapable of comprehending the simplest matter of account, and, though he had been formerly a very scientific botanist, he could not remember the names of the commonest plants; that in like manner he lost all knowledge and recollection on the subject of painting, pictures, the fine arts, and other subjects on which he had possessed extensive knowledge, having himself painted pictures held in great estimation, and composed

works and dissertations on painting and other of the fine arts ; that he lost all sense of decency, and would allow the said Ellen Elwyn and other females to remain and be present when glysters were administered to him, and at times would be stripped stark naked in her presence, and also in the presence of other females, without being sensible of any impropriety ; that he would also, when in the room with the said Ellen Elwyn and her sister, and the said Susan Rees, suddenly begin to perform the occasions of nature, and expose his person in the most indecent manner, and talk disgustingly ; that he was also subject to various delusions ; that amongst other delusions he fancied he had more toes upon one foot than on the other, and would have them counted, and he often rung the bell in the night for his attendant, and made her count his toes, and insisted that his toes were not in their right places, and that he had a different number on each foot, and, whatever was said to him, would persist in the assertion ; that at other times he would persist and declare that his head was on the wrong way, and that the hind part was before, and he also frequently declared there was a woman haunted him, and entreated she might be taken away, and when told there was no one present he still insisted to the contrary, and desired she might be removed ; that the said Ellen Elwyn, taking advantage of his weakness and imbecility, frequently imposed upon him in a manner which he would have immediately detected if he had been of sound mind ; that he usually retired to bed at the hour of seven, and subsequently at six in the evening, but when she was going to any place of diversion, as she frequently did, she would at a much earlier hour put on the hands of the

clock, so as to give him the impression it was time for him to go to bed, and he would be deceived thereby; and she often imposed upon him in similar instances, and considered and treated and talked to him in such a manner as a child or idiot would be considered and treated, and not as a sensible and rational person; that she, the said Ellen Elwyn, for some time prior to the month of September, one thousand eight hundred and thirty-seven, was in the habit of opening all letters, and receiving all communications made to the deceased, and she also, without scruple, used to take his keys and open and inspect a drawer or desk where he kept his said will and other articles of importance, and would take them out and inspect them, and that he, the deceased, appeared to be and was totally unconscious of her so doing, though he had previously been most tenacious and scrupulous in allowing her or any other person to have access thereto; and this, &c.

That at the time the pretended will propounded in this cause on the part and behalf of the said Ellen Elwyn, the other party in this cause, bears date, to wit, on the seventeenth day of September, one thousand eight hundred and thirty-seven, he, the deceased, was not of perfect, sound, and disposing mind, memory, and understanding, and he was not fully capable of giving instructions for and of making and executing his last will and testament, or of doing any other serious or rational act of that or the like nature requiring thought, judgment, and reflection; that, on the contrary, the said deceased was, on and throughout the day aforesaid, as he had been some months prior thereto, in a state of mental imbecility, and from impaired intellect consequent on the disease of the brain before mentioned, or

Seventeenth.

from some other cause, was incapable of exercising thought or judgment on any serious matter ; also that he, the deceased, was utterly unable to protect himself from fraud and circumvention, or to defeat the same if attempted to be practised upon him by any person or persons ; and this, &c.

**Eighteenth.**

That the said Ellen Elwyn and also her husband, the said William Brame Elwyn, and the said Elizabeth Rees, spinster, a witness produced and examined on the condidit in this cause, on occasions happening in the year one thousand eight hundred and thirty-seven, as well prior as subsequent to the day of the date of the said pretended will in question, declared and admitted to divers persons that the deceased had been and was perfectly imbecile and childish, and had lost his recollection and mental faculties, or to the very same effect and meaning ; in particular, that when the said Ellen Elwyn came to London, in or about the month of \_\_\_\_\_, one thousand eight hundred and thirty-seven, she told divers persons who had been acquainted with the deceased that he had grown quite childish and would not know them, and that he had lost his reason and understanding, and made other declarations as to the imbecile state of the deceased's mind to the very same effect ; and this, &c.

**Nineteenth.**

That the said Ellen Elwyn, on divers occasions, happening in the latter part of the lifetime of the deceased, declared that she knew the contents of the will of the deceased, (thereby meaning and referring to the said will bearing date the twenty-sixth day of January, one thousand eight hundred and thirty-six ;) and the party proponent doth further allege and propound that she, the said Ellen Elwyn, on divers other occasions, hap-

pening after the day of the date of the said pretended will in question, also declared that she had had the arranging of the whole will, (meaning the said pretended will,) and that everything was left just as she liked, or to the very same effect; in particular, she, the said Ellen Elwyn, on an occasion happening between the day of the date of the said pretended will and the day of the deceased's death, so declared to Alice Paraman, widow, and farther mentioned to her some of the dispositions and bequests contained in the said pretended will, and said "that she, the said Ellen Elwyn, had thought of every one of the family," or to that effect; and this, &c.

That very shortly after the day of the date of the said pretended will in question, to wit, in the latter part of the month of September last, at which time it was evident, from the appearance and state of the deceased, that his life could not be long protracted, the said deceased was brought by the said Ellen Elwyn and her husband from Boulogne to the aforesaid house, situate in Lower Grosvenor Street, which they had previously taken; that at the time of his arrival in London he was in a most deplorable state of general infirmity, and though stimulants and other remedies were resorted to, which in some measure sustained him and kept him alive, (medical assistance having been then afforded him,) he gradually sunk, and died of the disease aforesaid, to wit, on the aforesaid thirtieth day of October last, at the said house in Lower Grosvenor Street; and this, &c. Twentieth.

That after the removal of the deceased from Boulogne to Lower Grosvenor Street in October last, as before pleaded, the said Ellen Elwyn and her husband Twenty-first.

have, and each of them hath, admitted and declared, to medical persons and others with whom they have conversed respecting the deceased, and who had observed or knew of the imbecile state of the deceased's mind, and the apparent loss of his mental faculties, that he, the deceased, had for some time previously been in the same state of imbecility and mental incapacity in which he then appeared to be, or to the same effect; and the party proponent doth further allege and propound, that between the time of the return of the deceased from Paris to Boulogne, and during all the remainder of the time he, the deceased, was at Boulogne, and until his arrival in London, to wit, from the beginning of the month of July to the end of the aforesaid month of September last past, he, the deceased, was not attended by any medical person, notwithstanding his state and condition were such as absolutely to require medical assistance and care, and she, the said Ellen Elwyn, alone attended him, and declared that she did so, and that she managed him herself, or to the same effect; and this, &c.

Twenty-  
second.

That the said house which the deceased took and furnished in Dean Street aforesaid was not given up or disposed of until the month of July, one thousand eight hundred and thirty-seven; that until such time an establishment of servants was kept up in the said house at the expense of the said deceased; and the said Ellen Elwyn several times came from Boulogne and remained there, though her husband, the said William Brame Elwyn, usually lodged elsewhere; and the said Elizabeth Rees also stayed in the said house for several weeks together, as well alone as when the said Ellen Elwyn was there; that the said Ellen Elwyn on such



occasions of her coming opened the cellars, and all or many of the repositories of the said deceased, the locks of some of which she caused to be forced or picked, and took what she pleased therefrom, and inspected the letters and private papers of the deceased; that she and the said Elizabeth Rees also gave dinners and entertainments at the said house, and used the wines and liquors of the deceased; that on the final relinquishment of the said house, which was negotiated by her the said Ellen Elwyn, a considerable part of the furniture and other effects were conveyed to a house in Lower Sloane Street, or some other street in Chelsea, where the mother of the said Ellen Elwyn resided; and this, &c.

That Henry Daniel Ganning, the drawer, and one of the attesting witnesses to the said pretended will in question, formerly practised as an attorney in London, but for some years ceased so to practise, and subsequently repaired to Dublin, Paris, and other places, and some time since he took up his residence in Boulogne; that the said Henry Daniel Ganning, at Boulogne, became acquainted with the said Ellen Elwyn, party in this cause, and was very frequently in her company there and elsewhere; and the party proponent doth further expressly allege and propound, that shortly prior to the day of the date of the pretended will in question the said Ellen Elwyn had frequent meetings and consultations with the said Henry Daniel Ganning, both at her own residence and also at the residence of the said Henry Daniel Ganning, and elsewhere, and many letters, notes, and messages passed between them; and this, &c.

Twenty-third.

Twenty-fourth.

That the said Ellen Elwyn and her said husband took upon themselves the ordering and arrangement of the funeral of the deceased, who was buried at Sandwich, in the county of Kent, on or about the sixth day of the month of November last past; that the said Ellen Elwyn and her said husband accompanied the hearse with the deceased's body, and were met by the said Henry Daniel Ganning, who came over from Boulogne for such meeting at Canterbury, and they all dined together at an inn at that place; that after dinner the said Henry Daniel Ganning and Ellen Elwyn, leaving the said William Brame Elwyn, went into another room of the said inn, and there remained a considerable time in conference on the course to be adopted in the matter of the deceased's will; and this, &c.

Twenty-fifth.

That after the funeral of the deceased had taken place, the friends attending same and other persons were requested by or on the part and behalf of the said Ellen Elwyn to wait and hear the deceased's will read, and they accordingly assembled at a room at the Inn, in Sandwich, for that purpose; that the said Ellen Elwyn, on such occasion, produced the pretended will in dispute in this cause from her bag or reticule, and handed same, being then enclosed and sealed up in an envelope, to Benjamin Hulk, of Deal, in the said county, solicitor, who took the said pretended will from such envelope and read it aloud; that in so reading same, the said Benjamin Hulk inadvertently read the said legacy to Mrs. John Rainier, the widow of the deceased's brother, Admiral Rainier, as being a legacy of one hundred pounds only; whereupon the said Ellen Elwyn immediately interrupted him, saying, that he

had made a mistake, that the legacy was of one thousand pounds, and she requested him to read that part again, which he accordingly did: and the party propo-  
nent doth further allege and propound, that after the said pretended will had been completely read, the said Thomas Mayhew, party in this cause, who with others had attended the funeral, requested to know if there had not been a former will; whereupon the said Henry Daniel Ganning, then also present, after some hesitation stated, in reply, that there had been a former will, but then that will had a codicil, and he intimated that the dispositions of the deceased's estate by such codicil were rendered similar to those of the will in dispute; and he then and there positively affirmed and declared, contrary to the fact, that the said former will and codicil, thereby meaning and intending the said will of the twenty-sixth day of January, one thousand eight hundred and thirty-six, and the paper writing purporting to be and contain a codicil thereto, same being the very paper writing now remaining in the registry of this court, annexed to the said affidavit of the said Ellen Elwyn, as to scripts, and marked E, had been burnt and destroyed by him, the said Henry Daniel Ganning, pursuant to the deceased's directions at the time when the present will in dispute was made, or on the said occasion the said Henry Daniel Ganning falsely alleged to the very same effect and meaning as hereinbefore is pleaded; and this, &c.

That shortly after the funeral of the said deceased, he, the said Henry Daniel Ganning, repaired to Boulogne, where he applied to several persons who had known the deceased, and endeavoured to induce them to come forward and give evidence of his, the deceased's,

Twenty-  
sixth.

sanity; that in conversation with some of the said persons he, the said Henry Daniel Ganning, expressed himself in the most disgusting and brutal terms, saying that "the old beggar, (meaning the deceased,) was dead, and gone to hell safe enough, and that he had been at his funeral," with similar expressions; that one of the said persons, Monsieur Leclerq Albert, having been applied to as aforesaid, informed the said Henry Daniel Ganning that he had never seen the deceased more than once or twice, and had never had anything to do with him, but the said Henry Daniel Ganning nevertheless still endeavoured to persuade him that he might go to London and swear as to the deceased's having been sane, promising him that if he would do so all his expenses would be paid, or to that effect; and he made like suggestions to several other persons; and this, &c.

Twenty-  
seventh.

That when the said Ellen Elwyn had been sworn as executrix to the said pretended will, she, the said Ellen Elwyn, thereupon, to wit, at the office of her proctor in this cause, proposed to burn and destroy the said will of the twenty-sixth day of January, one thousand eight hundred and thirty-six, and she was about to put the same into the fire, but was prevented from effecting such purpose by her said proctor or some other person then present; that the said Ellen Elwyn hath declared or admitted such to have been the fact; and this, &c.

Twenty-  
eighth.

That since the death of the said deceased, the said Ellen Elwyn and her husband have continued to live and reside in Lower Grosvenor Street aforesaid, and have possessed themselves of the horses, carriages, plate, pictures, wine, liquors, goods, chattels, and other effects of him the said deceased, and appropriated the same and had the use and enjoyment thereof, and they

still use and enjoy the same ; and they or one of them have or hath possessed himself or herself of the papers and documents of and belonging to the said deceased ; and the party proponent doth further allege and propound, that since the death of the said deceased, and since the commencement of the proceedings in the said cause, the said Henry Daniel Ganning, and also a female passing by the name of Mrs. Ganning, have stayed at the said house on visits to the said Ellen Elwyn, and been entertained there, and they, the said Henry Daniel Ganning and the said female, and each of them, have attended meetings and consultations which have been had between the said Ellen Elwyn and her agents or advisers, and when examinations have been had of persons who have been applied to to give their evidence or statements in relation to the deceased and the matters in question ; and this, &c.

That all and singular the premises were and are true, and so forth. Twenty-ninth.

### *Responsive Allegation.*

That the Reverend George Gordon Smith, Clerk, the party deceased in this cause, died on the 16th day of May, 1840, in the Queen's Bench Prison, leaving behind him Marianne Smith, widow, his lawful relict, the said Charles Mackintosh Smith, and Francis Rawleigh Grant Smith, his natural and lawful brothers, and Sophia Cresswell, (wife of the Reverend Henry Cresswell, Clerk,) his natural and lawful sister, and together with Charles Drummond Bailey and Henry Edwin Bailey, (children of a deceased sister,) his lawful nephews, the only persons entitled in the distribution

*Responsive allegation.*

*First.*

of his personal estate and effects. That the said deceased, at the time of his death, was possessed of personal estate only, which consisted principally of the sum of ten thousand pounds, or thereabouts, secured on estates in Ireland, the property of Sir Arthur Chichester, Baronet, to whom the said deceased, some time previous to his death, had lent or advanced that sum on mortgage; and this, &c.

Second.

That the said deceased always, whilst of sound mind, lived upon the best and most affectionate terms with his brother, the aforesaid Francis Rawleigh Grant Smith; that his said brother assisted him, the deceased, when in pecuniary difficulties, as long as he had the means of so doing; and that the said deceased frequently admitted such to have been the fact, and spoke of his obligations to his said brother for the assistance he had so afforded him; that at length, to wit, in or shortly before the month of December, 1837, the said Francis Rawleigh Grant Smith also became in embarrassed circumstances, when the said deceased, who at such time was indebted for his own support to monies advanced to him from time to time by his solicitor, Mr. Goren, (as and on the security hereinafter pleaded,) authorized and requested the said Mr. Goren to contribute likewise to his said brother's maintenance and support, as well as his own, on his guarantee; and that on or about the 15th day of December, 1837, the said deceased wrote, addressed, and sent a letter to his said brother, apprizing him that he had so done; and this, &c.

Third.

That in part supply of proof of the premises mentioned and set forth in the next preceding article, and to all other intents and purposes in law, the party propo-  
nent exhibits, hereto annexes, and prays that the

same may be here read and inserted, and taken as part and parcel hereof, a certain paper writing, marked No. 1, and doth allege and propound the same to be and contain the original letter so written, addressed and sent to the said Francis Rawleigh Grant Smith by the said deceased, as in the next preceding article pleaded. That the whole body, series, and contents of the same, and the subscription thereto, and the superscription thereon, were and are of the proper handwriting and subscription of the said deceased, and are so well known or believed to be by divers persons of good faith, credit, and reputation, who well knew and were acquainted with the said deceased, and also with his manner and character of handwriting and subscription, having frequently seen him write, and write and subscribe his name; and this, &c.

That from the aforesaid 15th day of December, 1837, Fourth. the said Mr. Goren continued, at the request and on the guarantee of the said deceased, as aforesaid, to make weekly advances in the way of pecuniary assistance to the said Francis Rawleigh Grant Smith, until about the month of April, 1838, when the said Francis Rawleigh Grant Smith ceased to require pecuniary assistance, in consequence of having obtained a situation, the salary of which was adequate to his maintenance and support. That the said Francis Rawleigh Grant Smith continued to visit the deceased from time to time up to the period of his decease, nothing whatever having occurred in that time to interrupt the harmony and good feeling which had ever subsisted between the two brothers; and that the said deceased on all occasions, whilst of sound mind, received him kindly and affectionately; that on many occasions, however, without any cause or

reason, the said deceased evinced antipathy towards his said brother, and would either refuse to see him, (locking himself up in his room to avoid his visits,) or, if seen, would express the utmost impatience of his presence and eagerness for his departure; and this, &c.

Fifth.

That the said deceased married his aforesaid wife, (theretofore the widow of the late Colonel Baron de Daubrawa,) in the month of July, 1818, and that she lived and cohabited with him from such time until the close of the year 1830, when she was compelled to separate herself from him owing to alleged misconduct on his part. That the deceased, on her so doing, was induced to execute, and did, to wit, on the 22nd day of December in that year, in fact, execute a deed, whereby he agreed to allow his said wife the sum of two hundred pounds per annum for her separate maintenance. That the said deceased from such time paid his said wife her said annuity through her trustees, John Carter and William Ashton Barton, until some time in the year 1833, when he discontinued the payment of the said annuity and refused the trustees any security for its payment in the future. That he was thereupon arrested at their suit, to wit, in the beginning of the year 1834, and committed to the Queen's Bench Prison, within the rules of which he continued to live until the month of January, 1837, and from and after that time within the walls of the said prison until his death; and this, &c.

Sixth.

That the said deceased was naturally and at all times peculiar and eccentric in very many respects, and that his general conduct from about the time of his aforesaid arrest was such as to induce his relations, friends, and acquaintances generally to conclude him insane. That



he drank to excess habitually. That he was in the habit of uttering blasphemous and profane oaths on all occasions. That he cohabited for many years openly and undisguisedly with a female of loose character from and after his said arrest, at different places within the rules of the Queen's Bench Prison, until his confinement within the walls of the said prison. That although, upon such his confinement within the walls, the said female was not permitted to cohabit with the deceased, yet that, until very shortly before his death, she constantly visited and spent the greater part of her time with him in the said prison; and this, &c.

That the said deceased from the time of his confinement within the walls of the Queen's Bench Prison, and more especially for and during about the last year of his life, was subject to various and strong delusions; that he often imagined and insisted that such and such people were haunting him, and that he saw them in his room when no such people were there; that it was customary with him to pace up and down his room for hours together, and to talk, as if in earnest conversation with others, when he was quite alone. That it was also common with him, utterly without foundation, to insist that he heard persons abusing him day and night, and voices calling "George Gordon Smith—George Gordon Smith—you are a great rascal, and deserve to be hanged," and declared that such voices came sometimes from a cupboard by his fireplace, and sometimes from a neighbouring room. That he would frequently sit for hours together, and sometimes until late at night, striking the bars of his grate with the poker or tongs, making a great noise, and calling out loudly, "Scoundrels! villains!" and the like; that he also used

Seventh.

to walk up and down the passage or lobby joining his room flourishing a poker or broomstick, and exclaiming, "You scoundrels! did you not go to Ireland to inquire about my character?" and then, after a pause, "You did—you did; be off scoundrels! devils!" and the like; after which, all of a sudden, he would skulk into his room and slam the door to with great violence. That most, or many, at least, of the persons occupying rooms on the same staircase considered the deceased as deranged and that, in consequence of such and similar his extravagances, he, the deceased, was known generally amongst his fellow prisoners and others in the Queen's Bench as the "Mad Parson," "Mad Smith," and the like; and this, &c.

Eighth.

That as James Fell, the other party in this cause, and the deceased were alone together in the room of the latter, about a fortnight or some short time before the death of the deceased, the deceased all of a sudden exclaimed, addressing the said James Fell, "Fell, don't you see him? don't you see him?" and upon the said James Fell saying, "No sir," or to that effect, the deceased added, "But I do; there he stands! there he stands!" with more to the same effect; that the said James Fell has since, as well before the death of the said deceased, said or admitted that the circumstance herein alleged did occur in substance, as alleged, and that the said deceased and he, the said James Fell, did on that occasion so express themselves severally and respectively, or to that very effect; and this, &c.

Ninth.

That on another occasion, happening on or about the same time as that last pleaded, the said deceased desired the said James Fell to get him an ox or bullock's tongue for his dinner, which the said James Fell ac-

cordingly did, but that on the instant the said tongue was brought into the room, and the cover taken off the dish in which it was served, the deceased exclaimed, "Take it away! take it away! there has been a woman breathing upon it!" and persisting in so exclaiming till the dish was removed. That as the said James Fell a day or two afterwards was speaking to Kendrick, a prisoner in the Queen's Bench, about the said deceased, whose name happened to be mentioned, he, the said James Fell, alluding to the deceased's state of mind, put his hand to his head and said "He," meaning the deceased, "is very queer here," and gave what is hereinabove pleaded as an instance of his so being. That the said James Fell at the same time told the said

Kendrick, as another instance of his being queer in the head, that the said deceased was very anxious to "get out," and had instructed him, the said James Fell, to raise money for effecting his liberation; and that, in order thereto, certain deeds had been prepared, but which deeds, although prepared, he, the said deceased, refused to execute; that the said James Fell moreover stated to the said Kendrick, in the course of such their conversation, that the said deceased lived on rum and gruel, meaning that he was wholly or principally kept alive thereby; and this, &c.

That the disease under which the said deceased suffered was pulmonary consumption, and that for several months before his death it was evident to the persons about him, that the said disease would terminate fatally. That the said deceased absolutely refused to see a medical man, who was sent to visit him in such his last illness by the officers of the prison, until within about the last fortnight of his life, and that although

Tenth.

he was then induced to suffer or permit the visits of such medical man, still he would neither follow his advice nor take his prescriptions. That the said deceased nevertheless continued to indulge to excess in the use of intoxicating liquors, chiefly ardent spirits, and that the said James Fell did and would persist in affording him almost to the last the means of such pernicious indulgence, though remonstrated with for so doing, and warned not so to do, as hereinafter more particularly pleaded; and this, &c.

Eleventh.

That the said deceased became acquainted with the said James Fell, also a prisoner in the Queen's Bench Prison, in or about the month of January, 1840, by dealing with him for different articles, he, the said James Fell, having about that time set up a chandler's shop on the ground floor of No. 9, that is, of the building in the Queen's Bench so numbered, and in which the deceased occupied one of the top or upper rooms; that the said James Fell soon after contrived at first to introduce himself into the society of the deceased, and then by degrees to worm himself into his confidence; but that as the deceased was becoming weaker and weaker in body during all that interval, so his mental faculties during the while were suffering a similar diminution or impairment, and that only by reason thereof and of his unsound state of mind, hereinbefore and hereinafter to be pleaded, did the said James Fell succeed in duping and defrauding the deceased, in manner as and to the extent also to be pleaded in subsequent articles of this allegation; and this, &c.

Twelfth.

That whilst in prison as aforesaid, the deceased was entirely dependent for support on different members of his family, and on his several professional advisers, who

assisted him with small sums from time to time, being unable during all such time to obtain any payment of interest even on the sum constituting, as aforesaid, nearly the whole of his property, which he had lent, as aforesaid, on mortgage of his Irish estates, to Sir Arthur Chichester. That from about the month of August, 1837, the aforesaid Mr. Goren, who then became his solicitor, advanced to him weekly a sum varying from one pound to thirty shillings for his maintenance, (latterly on the security of an assignment of his, the deceased's, mortgage interest in the said Sir Arthur Chichester's Irish estate); that he, the said Mr. Goren, was also during all such time endeavouring to effect the release of the said deceased, to wit, by obtaining payment wholly or in part of the principal, or at least of the interest due on the principal, of the aforesaid mortgage debt, but which was necessarily a slow process, owing to the debtor aforesaid being in embarrassed circumstances, and to his affairs having in consequence been put under the management of the Irish Court of Chancery; and this, &c.

That the deceased had been extremely impatient of his confinement in the Queen's Bench and eager to be released therefrom for a long time before his death, and that on his becoming weaker in body and mind, as before pleaded, the said James Fell, working upon and converting his feelings in that respect, (which then became more and more intense,) to his own purposes, gradually led the said deceased to believe, (though without any foundation for such belief,) that his solicitor, the said Mr. Goren, had funds in hand, obtained from the Irish estates of his mortgage debtor, Sir Arthur Chichester aforesaid, sufficient to effect his

Thirteenth.

release, and consequently that his further detention in the said prison was solely owing to the neglect, or mismanagement at least, if not dishonesty, of the said Mr. Goren. That having once imbued the deceased's weak mind with this delusion, and which it ever after retained, the said James Fell then, in the name and as by the authority of the said deceased, wrote, addressed, and sent to the said Mr. Goren, to wit, in the month of April, 1840, two several letters hereto annexed, marked No. 2 and No. 3, relative to the affairs of the deceased, both of such letters, (signatures and all, though purported to be those of the deceased,) being in the proper handwriting of him the said James Fell; and this, &c.

Fourteenth. That immediately upon the receipt of the first in point of date of the before-mentioned letters, to wit, on the fourth day of April last, the said Mr. Goren went to the Queen's Bench Prison, in order to come to an explanation with the said deceased on the subject of such letter, if written at his instance or by his authority, and then and there had an interview with the said deceased for that purpose; but that the said deceased, although not absolutely drunk, had been drinking to some excess, and was therefrom and otherwise in too excited a state to admit of the said Mr. Goren's entering into any explanation with him, (as it was his wish and intention to have done,) as to the general state of his affairs, although he endeavoured, but apparently altogether unsuccessfully, to dispel the delusion or false impression made upon his, the deceased's, mind by the said James Fell as aforesaid. That after his said interview with the deceased on that day, the said Mr. Goren had an interview with the said James Fell,

whom he severely reprimanded for having instilled into the weak mind of the deceased the delusion or false impression aforesaid, but which the said James Fell positively denied to have been the fact, asserting, instead, that it was the deceased's own notions; that he, Fell, knew nothing of his affairs but from his, the deceased's, own representations; also that, on the said occasion, the said James Fell having complained of the deceased being in his debt, and having thereupon, as required by the said Mr. Goren, produced his account against the deceased, such account, when produced, was found to consist chiefly of charges for ardent spirits recently supplied to the said deceased; that the said Mr. Goren thereupon strongly protested against the said deceased, in his state and condition, being so supplied, or at all supplied, with ardent spirits, severely reprimanded the said James Fell for having then already so supplied him, and expressly warned him to abstain from so doing in future; and this, &c.

That the said Mr. Goren had other interviews with the said deceased in the said Queen's Bench Prison in the said month of April, to wit, on the 7th and 24th days of that month, on each of which days he found him, as before, from liquor and otherwise, in too excited a state to listen to reason or argument, and still labouring, as before, under an intense feeling of impatience of confinement, and under a delusion or false impression too fixed for removal by any explanation or argument; viz., that the receiver to Sir Arthur Chichester's estate had paid or advanced to Mr. Goren a sum sufficient for his, the deceased's, liberation, and that it was the said Mr. Goren, therefore (and not his cre-

Fifteenth.

ditors), who either corruptly, or at least wantonly, still kept him in goal; and this, &c.

Sixteenth.

That the said Mr. Goren, on the 27th of the said month of April, received another letter, (being the exhibit marked No. 4, hereto annexed,) as from the deceased, but written, as the two former had been, by the said James Fell, though signed by the deceased, desiring that the said Mr. Goren would procure his, the deceased's, discharge under the Insolvent Debtors' Act; that upon the receipt, and in reference to the subject of that letter, the said Mr. Goren, being prevented himself by other avocations, immediately, to wit, on the same day, sent a clerk of his to the Queen's Bench to see the said deceased; that the said clerk, upon being shewn into the deceased's room, (as he was by the said James Fell, but who himself immediately left the same,) found the said deceased in a state of great and even frantic excitement; that he would listen to nothing that the said clerk had to say in the way of soothing or appeasing him, which the said clerk attempted to do previous and preparatory to entering on business; that the said deceased presently seized the poker and compelled the said clerk to quit the room, under peril of forcible ejectment, and followed him down stairs, uttering oaths and imprecations both on himself and on his employer; and this, &c.

Seventeenth.

That the said Mr. Goren received two other letters under dates of the 4th and 5th of May following, being the exhibits marked No. 5 and No 6 hereunto annexed; that the first of such exhibits is a letter signed by the deceased, but in the handwriting of the said James Fell,



and that the second of such exhibits is a letter written by and as from the said James Fell himself to the said Mr. Goren, professedly without the knowledge of, but earnestly begging pecuniary assistance for, the deceased; that partly in consequence of such letter, the said Mr. Goren again went to the Queen's Bench Prison, and there again, and for the last time, saw the deceased, to wit, on the 9th day of the said month of May; that the said deceased was then in bed; still, as before, from liquor or otherwise, in a state of high excitement, and that at such time it was evident to Mr. Goren that his end was fast approaching; that everything about the deceased was strongly indicative of wretchedness, and that his nurse and only attendant, Mary Simms, a witness produced and examined on behalf of the said James Fell, was threatening to quit or abandon the deceased, and would have so done but for the said Mr. Goren's instructions to her to continue her attendance upon him, he, Mr. Goren, undertaking himself to pay her or see her paid for such attendance; and this, &c.

That the said deceased, in the course of the last few Eighteenth. days of his life, was not only supplied by the said James Fell with ardent spirits, as hereinbefore pleaded, but was also liberally furnished with wine from a sort of tavern or coffee-house in the Queen's Bench Prison, kept by a person named E S Clarke; and this, &c.

That notwithstanding the premises, on the day next Nineteenth. but one after Mr. Goren's interview with the deceased and the said James Fell, pleaded in the seventeenth article of this allegation, to wit, on the 11th of the said month of May, the said James Fell procured the said deceased's signature to a bill or promissory note of

some sort, for the sum of three thousand pounds, but which signature he, the said James Fell, procured by fraud and artifice, at a time when the said deceased was of weak and unsound mind, and in the custody of him, the said James Fell, or under his undue influence and control; that the said James Fell, since the death of the said deceased, hath, both by himself and agents, attempted to negotiate or raise money on the said bill or promissory note; and this, &c.

Twentieth.

That in part supply and proof of the premises in the next preceding article pleaded, the party proponent exhibits hereto annexed, and prays to be here read and inserted, and taken as part and parcel hereof, the paper writing hereunto annexed, marked No. 9; that the whole body, series, and contents of the said exhibit were and are of the proper handwriting of the said James Fell, and are so well known and believed to be by divers persons of good faith, credit, and reputation, who know and are well acquainted with the said James Fell, and also with his manner and character of handwriting, having frequently seen him write, and write and subscribe his name, and that the same was delivered by him, Fell, to a person whom he entrusted to endeavour to negotiate the said pretended bill or promissory note itself, after the death of the said deceased; and this, &c.

Twenty-first.

That in the allegation heretofore admitted in this cause on behalf of the said James Fell, it is in great part, (and in substance altogether,) untruly alleged and pleaded, for that the said Reverend George Gordon Smith, the deceased in this cause, was not, at the time of the making of the pretended will propounded in this cause, of perfect sound mind and memory, as therein

falsely pleaded, but, on the contrary, that he was at such time, and had for some time before been, and ever after continued to be, not only of greatly weakened or impaired, but also of unsound, mind and memory; and the party proponent further expressly alleges and propounds, that the said pretended will was obtained by fraud and circumvention, practised by the said James Fell on the said deceased, and by means of the undue control exercised by him, James Fell, over the deceased, at or about the time when the same bears date, he, the deceased, being of weak and unsound mind at such time, as hereinbefore pleaded; and this, &c.

That the death of the said deceased was communicated to his solicitor, Mr. Goren, on the day thereof, in and by means of the letter hereunto annexed, marked No. 10, written, addressed, and sent on that day to him, the said Mr. Goren, by the said James Fell; that, pursuant to the wish therein expressed by the said James Fell, the said Mr. Goren, immediately upon the receipt of the said letter, to wit, on the same day, proceeded to the Queen's Bench Prison, and then and there had an interview with the said James Fell; that, immediately upon seeing the said Mr. Goren on that occasion, the said James Fell, who was greatly elated, said, addressing Mr. Goren, "Mr. Goren, I am extremely well satisfied with your exertions on Mr. Smith's behalf, and now I wish you to continue to act for me;" and upon the said Mr. Goren asking, in a tone of surprise, "How?" or "In what respect?" added, "that Mr. Smith had made a will of which he did not know the contents, only that he was the sole executor," and would take him to the gentleman who

Twenty-second.

made it." That the said Mr. Goren thereupon replied, "Why, that, Mr. Fell, will require some consideration, and particularly as your present statement does not agree with your conduct in Mr. Smith's lifetime;" that the said James Fell, without any more being said, then took him to the room of, and introduced him to, a person named James Bowditch, then also a prisoner in the Queen's Bench, a witness since produced and examined on his, Fell's, part, and by whom the said pretended will is understood to have been drawn up and prepared. That on Mr. Goren begging to see the will, as he did immediately after their formal introduction to each other by the said James Fell, the said Mr. Bowditch exclaimed, "Will! but are you friend or foe?" though, after some little demur, he produced and handed to the said Mr. Goren what purported to be the draft of the will, for his perusal. That the said Mr. Goren having read the same, and asked Mr. Bowditch from what or whose instructions the same had been drawn up, he, the said James Bowditch, replied, that the said James Fell had brought him the copy of a mortgage deed, and that from such and his, Fell's, verbal instructions, the said draft had been prepared; and that the said James Bowditch, in further answer to questions of Mr. Goren, admitted that the said pretended will had not been read over to or by the said deceased previous to its execution by him. That the said Mr. Goren was then proceeding to ask the said James Fell some questions as to the said pretended will, when the said James Bowditch all at once drew up and said, addressing the said James Fell, "Don't answer any more questions; I see what Mr. Goren's at;" or they, the said Mr. Goren and Mr. Bowditch

and the said James Fell respectively, then and there respectively expressed themselves to that precise effect; and this, &c.

That all and singular the premises were and are true, and so forth. Twenty-third.

### *Responsive Allegation.*

That the said Taver Penny, the deceased in this cause, being of the age of about seventy years, departed this life on or about the 6th day of November, 1841, a bachelor, without a parent, leaving surviving him Elizabeth Turner, widow, and Harriet Penny, spinster, the parties in this cause, the natural and lawful sisters and only next of kin, and the only persons entitled in distribution to his personal estate and effects in case he shall be pronounced to have died intestate. That the said deceased was, at the time of his death, possessed of or entitled to personal estate of the value or amount of fourteen thousand pounds, or thereabouts, and real property of the value of ten thousand pounds, or thereabouts; and this was and is true, public, and notorious, and so much the said Elizabeth Turner, the other party in this cause, doth know or hath heard, and in her conscience believes and hath confessed to be true, and the party proponent doth allege and propound everything in this and the subsequent articles of this allegation contained jointly and severally. Responsive allegation.  
First.

That in the month of December, in the said year 1841, the said Elizabeth Turner, widow, together with the said Harriet Penny, spinster, duly applied for and obtained letters of administration of all and singular the goods, chattels, and credits of the said deceased, as Second.

dying intestate, to be committed and granted to them under seal of this court, (as by the acts and records of the said court, on reference being thereto had, will more fully appear,) and they accordingly intermeddled in the goods of the said deceased; and this was and is true, and the party proponent doth allege and propound as before.

Third.

That in the year 1791, the said deceased, who was then a midshipman or officer in the Royal Navy, was in that capacity on board the \_\_\_\_\_, (a vessel of war commanded by Sir Rupert George,) at such a time on a cruise under the Line. That in the cruise, to wit, on a day happening in the month of \_\_\_\_\_, in the said year, 1791, the said deceased, having been sent aloft whilst the sun was vertical, was struck by a *coup de soleil* and fell upon the deck, and was so much injured by the effects of the said *coup de soleil* and of the said fall that he was totally incapacitated from the performance of his duty, and was accordingly, by the advice and direction of the said commander, sent home to this country. That before, or immediately after his return home, the symptoms of deceased's malady became considerably increased and aggravated, and in a short time produced disease or affection of the brain and cerebral system, from the effect of which he never afterwards recovered, but was reduced to a state of complete insanity, and became totally unfit to manage himself or his affairs, or to do any act of a serious or important nature requiring thought, judgment, and reflection; and this was and is true, and the party proponent doth allege and propound as before.

Fourth.

That in the year 1796, in consequence of his insanity before pleaded, the said deceased was placed by his

family under the care and treatment of Cox, Doctor of Medicine, who kept an establishment for the reception of lunatics or insane persons at the Fish-ponds, near the city of Bristol, where he, the deceased, remained until the year 1797, and was then, (as no hope was entertained of his recovery, removed home, and thereafter continued under the care and in the custody of his said family until the day of his death. And the party proponent expressly alleges and propounds, that from or from shortly after the time of the accident mentioned and set forth in the next preceding article, the deceased was, and continued to be until his death, an incurable lunatic, without lucid intervals, and was so considered and treated by and amongst his relations, friends, and acquaintances; and this was and is true, and the party proponent doth allege and propound as before.

That at the time the pretended will propounded in Fifth. this cause on the part and behalf of the said Elizabeth Turner, the other party in this cause, bears date, to wit, on the 5th day of April, 1792, the said deceased was not of perfect, sound, and disposing mind, memory, and understanding, and was not capable of giving instructions for and of making and executing his last will and testament, and of doing any other serious or rational act of that or the like nature requiring thought, judgment, or reflection; but on the contrary, that he, the deceased, was on and throughout the day aforesaid, as he had been long prior thereto, in a state of complete insanity, mental imbecility, or idiotcy, and from those or other causes was totally incapable of exercising thought or judgment on any serious matter whatever;

and this was and is true, and the party proponent doth allege and propound as before.

Sixth.

That in consequence of the continuing insanity of the said deceased, before pleaded and set forth, it became necessary to place him under the protection of the Court of Chancery; and accordingly, that on or about the 26th day of December, 1810, a commission in the nature of a writ *de lunatico inquirendo* was procured from that court, at the petition of his family, and at the inquisition taken thereunder, to wit, on the 14th day of January, 1811, a verdict was found by the jury, duly empannelled thereon, that the said deceased was then an incurable lunatic without lucid intervals; and the party proponent doth expressly allege and propound that no attempt was made by any member or members of the family of the deceased to refer his lunacy to an earlier period or in particular to a period preceding the said 5th day of April, 1792, the day of the date of the pretended will in question in this cause, inasmuch as they were not aware of the existence of the said pretended will, (or of any other pretended document purporting or asserted to have been signed or executed by the said deceased as a will, at such time, or in fact until long after the death of the said deceased; and this was and is true, and the party proponent doth allege and propound as before.

Seventh.

That in part supply of proof of the premises in the next preceding article pleaded and set forth, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit and hereto annex, and pray to be here read and inserted and taken as part and parcel hereof, a certain paper writing marked A, and doth



allege and propound the same to be and contain a true copy of the inquisition or verdict taken under and by virtue of the commission in the nature of a writ *de hmatico inquirendo* in the next preceding article mentioned. That the same hath been faithfully extracted from the original inquisition and carefully collated with the original inquisition now remaining therein, and found to agree therewith. That all and singular the contents of the said exhibit were and are true, that all things were so had and done as therein contained, and that Taver Penny therein mentioned and Taver Penny the party in this cause, deceased, was and is one and the same person and not divers; and this was and is true, and the party proponent doth allege and propound as before.

That by an order of the Lord High Chancellor of England, bearing date the 5th day of April, in the said year 1811, John Herbert Browne, of Weymouth, in the county of Dorset, Esquire, an intimate friend of the said deceased and his family and one of the attesting witnesses to the said pretended will, was appointed committee of the estate and effects of the said deceased, and acted as such till his death, which happened some time in the month of February, 1833. That in the month of April, 1842, the said pretended will was accidentally discovered by Messrs. Manfield and Andrews, of Dorchester, solicitors, in an old box of papers which had been deposited in their office by Charlton Byam Wollaston, one of the executors of the said John Herbert Browne, deceased. And the party proponent doth further expressly allege and propound, that the existence of the said pretended will had never been

Eighth.

communicated by the said John Herbert Browne, and was wholly unknown to the parties in this cause or to any other member of the deceased's family; and this was and is true, and the party proponent doth allege and propound as before.

Ninth.

That all and singular the premises were and are true and so forth.

### *Responsive Allegation.*

Responsive  
allegation.

First.

That the said Catherine K——, widow, the deceased in this cause, died on the 18th day of February, 1819, being at that time of the age of seventy years and upwards. That the said deceased was, at the time of her death, possessed of or entitled to a policy of insurance on her own life, in the London Life Assurance Office, for the sum of one thousand pounds, and of furniture and other effects to the value of one hundred pounds, or thereabouts; and this was and is true, &c.

Second.

That the said deceased, being left without sufficient means of subsistence, on the death of her husband, James K——, which took place in the month of December, 1803, was from that period until the time of her death almost wholly supported by the party proponent, who paid her an annual allowance of fifty pounds, or thereabouts; and the party proponent doth further allege and propound, that some time in the year 1806 a policy of insurance on the life of the said deceased was effected in the Pelican Fire and Life Assurance Office for a term of seven years, and an annual premium of twenty pounds two shillings and sixpence, or

thereabouts, was paid thereon until the expiration thereof. That in the year 1814 a like policy on the life of the said deceased was effected, in the London Life Assurance Office, for a term of six years, for the sum of one thousand pounds, and an annual premium of sixty-two pounds eleven shillings and eightpence, or thereabouts, was paid thereon from that period until the time of the death of the said deceased. And the party proponent doth further allege and propound, that the said annual premiums were respectively paid out of the proper money of the party proponent, and that the said policies respectively were so effected, on an understanding between the said deceased and the party proponent that she, the said deceased, would by her will bequeath the sums thereby insured to him; and she, the said deceased, frequently, up to the time of her death, whilst of sound mind, declared that such was the understanding between herself and the party proponent; and that the same would be some compensation to him for the expense to which he had been put on her account; or she, the said deceased, frequently expressed herself to that effect; and she also frequently, whilst of sound mind, declared, as the fact was, that she had received all the property of which she was possessed from him, and that the whole thereof did, in fact, belong to him; or she, the said deceased, used words to that or the like effect; and this was, &c.

That the said deceased, so long as she continued of sound mind, had and entertained, and frequently expressed, the greatest regard and affection for the party proponent, and frequently staid in his house for several weeks together. That she, the said deceased, frequently declared that she owed all her comfort to him, and that

Third.

she intended to leave her property to him; and this was, &c.

Fourth.

That the said deceased, in pursuance of her intention of leaving her property to the party proponent, as mentioned in the next preceding article, duly made and executed the said will, bearing date the 6th day of March, 1817, now remaining in the registry of this court, annexed to an affidavit of the said Arthur K—— as to scripts, and thereby, after bequeathing to the said Margaret R——, one of the parties in this cause, her furniture, clothes, linen, &c., in consideration and on account of his having paid her an annuity, did, after payment of her debts, funeral expenses, and charges of proving her will, give and bequeath the residue of her property to the party proponent, and appointed him sole executor thereof. That shortly after she, the said deceased, had so made and executed her said will, she delivered the same to the party proponent, in whose possession it remained until her death; and the party proponent doth further allege and propound, that the contents of the said will were, soon after the execution thereof, made known to the said Margaret R—— and Cornelius R——, her husband, and to the other members of the said deceased's family; and this was, &c.

Fifth.

That the said deceased, on many occasions happening after she had so made and executed her said will mentioned in the next preceding article, and whilst she was of sound mind, expressed herself in terms of great satisfaction at having so done, and said "it would be some recompense to the party proponent for his dutiful and affectionate behaviour towards her and the many acts of kindness he had performed for her and

other members of his family;" or she, the said deceased, on such occasions, used words to that or the like effect; and this was, &c.

That the said Margaret R——, (wife of Cornelius Sixth. R——,) and James C——, the other parties in this cause, together with the said Cornelius R——, some or one of them, did, without any directions or instructions whatever from the said deceased, draw up and prepare, or cause to be drawn up and prepared, one or more will or wills in their own favour, and did, on several occasions happening in the latter part of the month of December, 1818, and the beginning of the following month of January, and during the illness of the deceased, hereinafter pleaded, importune the said deceased to execute the said will or wills, or to make a will in their favour, but that she, the said deceased, on each of the said occasions, so long as she continued of sound mind, refused so to do. And the party proponent doth further allege and propound, that on an occasion happening on or about the 14th day of January aforesaid, she, the said deceased, informed Catherine B——, wife of John B——, and the said John B——, that they, the said Margaret R——, James C——, and Cornelius R—— had so importuned her, and that she had refused to execute such will or wills which they had so prepared, or to make any will in favour of them, or any of them, and she, the said deceased, on the said occasion, added that it would be acting dishonestly to the said Arthur K—— to make and execute any such will, since the property she had was his, and not her own; or she, the said deceased, on the said occasion, expressed herself in words to that or the like effect. And the party proponent

doth further allege and propound, that at the time of making such declaration, the said deceased was of sound mind, memory, and understanding, and well knew and understood what she said and did; and this was, &c.

Seventh.

That the said deceased, whose health had been for some time before gradually declining, became much worse about Christmas, in the said year 1818; and from the beginning of the month of January following, until her death, she was confined altogether to her bed, save that in the middle of the day she was occasionally placed in an easy chair in her bedroom. That such the illness of the said deceased, which was occasioned by a general decay of nature, and which more especially affected her stomach, causing great indigestion, continued greatly to increase. And the party proponent doth further allege and propound, that from about the 24th day of the said month of January until within two or three days of her death, the mental and bodily faculties of the said deceased were so much impaired by her said illness that she used to remain for several hours together in a lethargic and torpid state, and without noticing any person about; that she was incapable of understanding what was said to her, and of recognising the persons of her family or her intimate and familiar acquaintances, or of remembering their names. That she would answer "yes" or "no," indiscriminately, to any question addressed to her and without understanding such questions; that she was incapable of conversing in a rational manner, and frequently talked wildly and incoherently; that she sometimes started from her bed, and though she had only her night-dress on, she would express a wish to go, and say she was actually going, to Kennington, in the county of Surrey, to see her son,

the party proponent, who lived in the Strand, in the county of Middlesex, and other persons who lived at a distance, and that during the whole of the period aforesaid, to wit, from about the 24th day of the said month of January until two or three days before her death, she, the said deceased, was, and was considered to be, a person of unsound mind, and was treated as such by her family, friends, acquaintance, and others. And the party proponent doth further allege and propound, that the said Margaret R——— and Cornelius R———, her husband, and the said James C——— frequently declared, as well during the latter end of the said month of January as during the beginning of the month of February following, to divers persons who called after the said deceased, and to others, that she was of unsound mind, and was raving, or expressed themselves to that effect; and this was, &c.

Whereas, in the first position or article of a certain Eighth. allegation or common condidit, given in and admitted in this cause on the part and behalf of the said Margaret R——— and James C———, the other parties in this cause, it is alleged and pleaded in the words or to the effect following, to wit, "That Catherine B———, the party in this cause deceased, being of sound mind, memory, and understanding, and being desirous to make her last will and testament in writing, did give directions and instructions for making the same; and, pursuant to such directions and instructions, the very will pleaded and exhibited in this cause was drawn up and reduced into writing, and was audibly and distinctly read over, (after the same had been so drawn up and reduced into writing,) to or by the said testatrix, who well understood the contents thereof, and liked and

approved of the same, and in testimony of such her good liking and approbation, she, the said testatrix, did, on or about the said 29th day of January, 1819, being the day of the date of the said will, set and subscribe her name thereto, and did publish and declare the said will as and for her last will and testament in the presence of credible witnesses, who in her presence, at her request, and in the presence of each other, did set and subscribe their names as witnesses thereto in manner as now appears. And the said testatrix did nominate, constitute, and appoint the said Margaret R——, (wife of Cornelius R——,) her daughter, and James C——, her grandson, executors thereof, and did give, will, dispose, devise, bequeath, and do in all things as in the said will is contained, and was at all and singular the premises of sound mind, memory, and understanding, and well knew and understood what she then said and did, and talked and discoursed rationally and sensibly, and was capable of giving instructions for and making and executing her will, or of doing any other serious or rational act of that or the like nature requiring thought, judgment, and reflection.” Now the same is therein in great part falsely and untruly alleged and pleaded, for the truth and fact was and is, and the party proponent doth allege and propound, that the said deceased did not give any directions or instructions for making the said pretended will; and that if the same was read over to or by the said deceased, that she, the said deceased, was incapable of knowing and understanding the contents thereof, and did not like or approve thereof; for the party proponent doth expressly allege and propound, that as well on the day of the date of the said pretended will as for some time before and



subsequent thereto, she, the said deceased, was of unsound mind and wholly incapable of giving instructions for her will, or of making and executing the same, or of doing any act requiring thought, judgment, and reflection. And the party proponent doth further allege and propound, that the said Margaret R——, Cornelius R——, and James C, some or one of them, did, without receiving any directions or instructions whatever from the said deceased, cause and procure to be drawn up and written the said pretended will, bearing date as aforesaid; and during the night of the said 29th day of January, or on some other subsequent date or night, whilst the said deceased was of unsound mind, did procure the signature of the said deceased thereto; and that the said James C——, or some other person, did guide and direct the hand of the said deceased when she executed the said pretended will, she being at such time incapable of writing her name without assistance. And that they, the said Margaret R——, James C——, and Cornelius R—— have confessed that they, some or one of them, did so guide the hand of the said deceased at the time of the execution of the said pretended will; and this was, &c.

That a very few days before her death, the said deceased having experienced relief from her complaint, gradually recovered the use of her mental faculties; and the party proponent doth further allege and propound that on or about the 16th day of the said month of February, being two days previous to the death of the said deceased, he, in company with Matthew B——, having called on the said deceased, and gone with the said Matthew B—— into her bedroom, where she was then in bed, did; after some previous conversation

Ninth.

with the said deceased, and in consequence of its having been reported that the execution of a will had been procured from her during her said illness, ask her "if she had signed any will during her illness," to which the said deceased replied, "My dear, I do not know, I have no recollection of having done so," and added "If I had, you know which way I should make it," and the party proponent having then inquired "which way she would so have made her will," she, the said deceased, replied, "You to have the policy, and Mrs. R——, (thereby meaning the said Margaret R——, party in this cause,) to have the rest of the effects, the same as the will you have," or "the same as the will I executed;" or she, the said deceased, then expressed herself in words to that or the like effect, and of the very same import and meaning; and was, at and during all and singular the premises, though weak in body, of perfect sound mind, memory, and understanding; and this was, &c.

Tenth.

That the said Margaret R—— and Cornelius R——, her husband, on various occasions, but more particularly on an occasion happening on or about the 7th day of March last, applied to the aforesaid John B—— and Catherine B——, and urged them with great importunity to assist them in establishing the said pretended will propounded in this cause, and to swear that the said deceased, on the said 29th day of January, 1819, the date of the date thereof, was of sound mind, and offered them, the said John B—— and Catherine B——, money and other assistance if they would give evidence in support of the said pretended will; that the said John B—— and Catherine B—— having refused so to do on the said

7th day of March, the said Margaret R—— there-upon burst into tears and exclaimed “it was all over with them,” or used words to that effect; and this, &c.

That all and singular the premises were and are true, and so forth. Eleventh.

The answers of the other party are taken to the responsive plea, which is put in proof in the usual manner. It is competent to bring in a replicatory plea if necessary. The same rule applies to exceptive allegations in this species of suits as in the preceding ones.

When the pleadings and proofs are completed, the cause is assigned for hearing, and the effect of the decision of the judge is embodied in a final interlocutory decree or in a definitive sentence.

The following form will illustrate the sentence:—

### *Sentence.*

In the name of God, amen. We, Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed the merits and circumstances of a certain cause or business of proving in solemn form of law, the last will and testament of George Hobart, late of Porchester Place, Oxford Square, Paddington, in the county of Middlesex, Esquire, Major of her Majesty's Second Regiment of Dragoons, or Scot's Greys, deceased, the said will bearing date the 9th day of May, in the year 1843,) and the said deceased having, whilst living,

Sentence for  
the validity  
of a will.

and at the time of his death, goods, chattels, or credits in divers dioceses or peculiar jurisdictions within the province of Canterbury, sufficient to found the jurisdiction of the said Prerogative Court; and which cause is controverted and now remains undetermined in judgment before us, between Mary Hobart, widow, the relict of the said deceased, and a legatee named in the said will, the party promoting the said cause on the one part, and Elizabeth Merrifield, spinster, the sole executrix of the will of the Reverend Henry Charles Hobart, Clerk, deceased, whilst living, the natural and lawful father of the said deceased, the original party against whom the said cause was promoted, on the other part. And the parties aforesaid lawfully appearing before us in judgment, by their proctors respectively, and the proctor for the said Mary Hobart, praying sentence to be given and justice to be done to his said party, and the proctor for the said Elizabeth Merrifield also earnestly praying justice to be done to his said party; and we, having first carefully and diligently searched into and considered the whole proceedings had and done before us in the said cause or business, and having observed all and singular the matters and things that by law in this behalf ought to be observed, we have thought fit, and do thus think fit, to proceed to the giving our definitive sentence or final decree in the said cause or business in manner and form following, that is to say—Forasmuch as by the acts enacted, deduced, alleged, exhibited, propounded, proved, and confessed in the said cause or business, we have found, and it doth evidently appear unto us, that the proctor of the said Mary Hobart hath fully and sufficiently founded and proved his intention deduced

in a certain allegation in writing, and last will and testament of the said George Hobart, bearing date the 9th day of May, 1843, as aforesaid propounded, exhibited and admitted in the said cause or business, (and which said allegation and last will and testament we take and will have taken as if here read and inserted,) for us to pronounce, as hereinafter is pronounced, and that nothing, at least effectual in law, hath on the part and behalf of the aforesaid Reverend Henry Charles Hobart, or the said Elizabeth Merrifield, spinster, his executrix aforesaid, been excepted, deduced, alleged, exhibited, propounded, proved, or confessed in the said cause or business, which may or ought in any way to defeat, prejudice, or weaken the intention of the said Mary Hobart, widow, the relict, and a legatee named in and by the said last will and testament of the said deceased, bearing date as aforesaid. Wherefore we, Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary aforesaid, first calling upon the name of Christ and having God alone before our eyes, and having heard counsel learned in the law, and also proctors on both sides, do pronounce, decree, and declare, that the said George Hobart, Esquire, the testator in this cause whilst living, and of sound and disposing mind, memory, and understanding, rightly and duly made and executed his last will and testament in writing, exhibited and pleaded in this cause, on the part and behalf of the said Mary Hobart, widow, bearing date the 9th day of May, in the year of our Lord 1843, and did give, will, bequeath, devise, dispose, and do in all things as is therein contained. And we do pronounce, decree, and declare for the full force, effect, and validity of the said true and original last will and

testament of the said deceased, bearing date as aforesaid, to all intents and purposes in the law whatsoever, and do approve of and receive the same by this our definitive sentence or final decree, which we read and promulge by these presents.

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### SUBTRACTION OF LEGACY.

CAUSES of subtraction of legacy have, ever since their origin, been of ecclesiastical cognizance in this country (a).

But they ceased to be the exclusive right of the Courts Christian when a concurrent jurisdiction on this point sprung up in Court of Chancery, which had begun to consider personal bequests in the light of trusts also.

After this, considerable less recourse was had to the ecclesiastical tribunal in this respect, although the jurisdiction, as exercised by it in a suit of subtraction of legacy, has, in many cases, an infinite superiority over the process by bill in equity, both from its being less expensive and also more expeditious in the result.

The jurisdiction over legacies contained in wills proved in the Prerogative Court of Canterbury is exercised, not by the commissary of that court, but by the official of the Arches Court, from whose commission it has never been severed, and the official

(a) *Hurst v. Beach*, 5 Madd. 351. *Capel v. Robarts and Neeld*, Hagg. R. 3, p. 161.

principal of each diocese enjoys a similar authority on the legacies under wills proved in the Episcopal Court.

The course of proceeding is as follows:—

The legatee, (or his attorney or assignee,) who has cause of complaint against an executor or administrator, (with the will annexed,) on account of the payment of his legacy being refused or deferred beyond the legal period, having ascertained the existence of assets sufficient for the due discharge of his claim, (and which is frequently done by previously exacting an inventory and account in the Prerogative or Diocesan Court,) extracts a citation against the executor or administrator with the will annexed, to answer to him in a cause of subtraction of legacy.

### *Citation.*

Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the province of Canterbury, greeting:

Citation for subtraction of legacy.

We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause Brina Israel, widow, the relict and sole executrix named in the last will and testament of Abraham Israel, deceased, whilst living, the acting and the surviving executor named in the last will and testament of Isaac Abraham, late of Hitchen, in the county of Hertford, broker, deceased, by reason of the said Abraham Israel having proved the said will of the said





The citation having been returned into court served, and the proxy of the promoter exhibited, and an appearance given on behalf of the party cited, a libel is prayed (*b*).

The libel is in great part a formal pleading, viz. :

### *Libel.*

In the name of God, amen. Before you the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury lawfully constituted, your surrogate, or some other competent judge in this behalf, the proctor of Joseph Butter, a legatee named in the last will and testament of Henry Holland, late of Sloane Place, in the parish of Saint Luke, Chelsea, in the county of Middlesex, Esquire, deceased, against Richard Robson, Esquire, one of the executors named in the said will, and against any other person or persons, &c.

Libel of subtraction of legacy:

That the said Henry Holland, Esquire, the testator in this cause, deceased, whilst of sound and disposing mind, memory, and understanding, duly made and executed his last will and testament in writing, bearing date the 10th day of August, in the year 1805, and therein nominated, constituted, and appointed the said Richard Robson, and also Richard Holland, Esquires, executors, and did give, bequeath, and dispose of his estate and effects, as in the said will is contained, and afterwards, to wit, on the 24th day of May, 1806, departed this life, without having revoked or altered the same; and this, &c.

First.

(*b*) *Butter v. Robson and Holland*, Phill. 3, p. 368.

Second.

That after the death of the said testator, the said will was, on the 26th day of June, 1806, duly proved in the Prerogative Court of Canterbury by, and probate thereof was granted and committed to, the said Richard Robson and Richard Holland, the executors named in the said will, (as by the acts and records of the said court, reference being thereunto had, will more fully appear,) and the said Richard Robson and Richard Holland took upon themselves the execution of the said will, and, by virtue thereof, intermeddled with, and possessed themselves of, the goods, chattels, and credits of the said deceased; and this, &c.

Third.

That the said testator, amongst other things, did, in and by his said will, give and bequeath legacies to his servants and clerks, in the words and to the effect following, to wit: "And to each and every of my servants and clerks who shall have lived with me, or been in my service, for the space of three years next preceding the time of my decease, two years' salary or wages, over and above what may be then due to them respectively for their salaries or wages, or otherwise respectively," as in and by the said will of the said deceased, now remaining in the registry of the said Prerogative Court of Canterbury, reference being thereunto had, will appear; and this, &c.

Fourth.

That at the time of the death of the said testator, and during nearly nine years previously thereto, the said Joseph Butter was in the service of the said testator, at the yearly wages of forty-five pounds, and that, by reason of the premises, salary or wages for two years, amounting to the sum of ninety pounds, with lawful interest until the payment thereof, became due

to the said Joseph Butter from the estate and effects of the said testator ; and this, &c.

That the goods, chattels, and credits of the said testator, which came to the hands and possession of the said Richard Robson and Richard Holland, were and are more than sufficient to pay the just debts of the deceased and the legacies by him given in and by his said will ; and this, &c. Fifth.

That the said Richard Robson hath been often, or at least once, lawfully asked or required to pay, or cause to be paid, to the said Joseph Butter, two years' salary or wages, amounting to the sum of ninety pounds, the amount of the legacy given and bequeathed to him by the said will of the said testator, together with lawful interest for the same, but that he hath refused, and still doth refuse, or at least hath unjustly delayed, and still doth unjustly delay, to pay and discharge the same ; and this, &c. Sixth.

That the said Richard Robson was and is of the province of Canterbury, and therefore, and by reason of his having proved the said will of the said deceased in the Prerogative Court of Canterbury, was and is subject to the jurisdiction of this court ; and this, &c. Seventh.

That of and concerning all and singular the premises, it hath been and is, by and on the part and behalf of the said Joseph Butter, lawfully and duly complained to you, the official principal aforesaid, and to this court ; and this, &c. Eighth.

That all and singular the premises were and are true, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays right and justice to be effectually done and administered to him and his said party in the pre- Ninth.

mises, and that you, the official principal aforesaid, will be pleased to pronounce the sum of ninety pounds to be due to the said Joseph Butter, with lawful interest for the same, and to condemn the said Richard Robson in all lawful costs made and to be made on the part and behalf of the said Joseph Butter in this cause, and that the said Richard Robson may be obliged and compelled to the due and effectual payment of the said sum of ninety pounds and interest, together with his costs, to the said Joseph Butter or his proctor.

The admission of the libel having been decreed, and the suit contested negatively, the usual order for the executor's answers is made. If the latter, in such answers, denies assets, or the identity of the legatee, it then becomes necessary to examine witnesses in proof of these points.

The other articles of the libel are verified by a reference to the records of the court, or of the Prerogative Court, in case of the suit being brought in the Arches Court.

But where assets and the identity of the party proceeding are confessed, nothing, of course, remains but to tender the *sors principalis*, or amount of legacy and costs, and the cause is then determined.

In some cases the defendant pleads responsively to the libel. The title of the claimant to be considered a legatee may be ambiguous or doubtful, and the other party may wish to obtain a clear knowledge of the construction of the will, by having the opinion of the court on it (c).

(c) In *Capel v. Robarts* and which the executors accordingly  
*Neeld*, (Hagg. R. 3, p. 156,) counterpleaded.  
 there was an "*ambiguitas latens*,"

The case having been taken to a hearing, and the legacy pronounced for, a monition may issue against the defendant, calling on him to pay the amount, together with the taxed costs of the promoter.

To guard himself against latent debts, the executor is entitled to demand security of the legatee, before paying his legacy, to refund in case the amount is required in discharge of them (*d*).

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## INTEREST CAUSES.

Suits in proof of pedigree are so called, as arising where the legal interest of a person in the estate of the deceased, as his nearest of kin, is denied on the grounds of illegitimacy or deficiency of evidence.

These questions arise either as an incident in a testamentary cause, where the *interest* of the contradictor to a will is denied, (see p. 470,) or form the subject matter of an original cause, respecting the right to administration of an intestate's effects.

In the first instance, the proceedings of the principal cause are suspended until this preliminary point is determined; but being exactly the same, in all essential respects, as an original cause, I shall confine myself to the latter.

This more generally commences by a caveat, (see p. 439,) which is warned in the usual manner, and, an

(*d*) *Higgins v. Higgins*, Hagg. R. 4, p. 244.

appearance being given, the interest of one or both of the contending parties is denied. Proxies are exhibited by each party, in the form (*mutatis mutandis*) of those used by next of kin in a testamentary suit, viz., to deny the interest of the adverse party, and to propound his own, if denied, or are solely directed to the latter effect; but if the interest of both parties is mutually denied, they must proceed in the cause, *pari passu*, and they are both assigned by the court to propound such interest in the usual allegations.

Neither party is permitted to see the adverse plea until he has first set out his own pedigree. The allegations are therefore brought in simultaneously, and copies exchanged, and the same decree for answers is made. This rule exists, whether the adverse party be another next of kin, or Her Majesty's proctor appearing on behalf of the Crown (a).

If a pretended next of kin has surreptitiously obtained letters of administration, in fraud of the legitimate relatives, the latter must adopt the course of calling the grant in, and putting the administrator upon proof of his asserted pedigree.

In such a case, a process is issued by the person desiring to invalidate the letters of administration, of analogous form to that which occurs at p. 460.

The decree having been personally served, and an appearance given, the court proceeds in the same manner as in the other instance before mentioned, with the exception of this rule, viz., that the party in possession of the administration is not bound to propound his interest, until the party calling it in question has

(a) *Rutherford v. Maule and others*, Hagg. R. 4, p. 238.

established his own(b); and, by force of this rule, a creditor in possession of an administration can deny the interest of a next of kin, and compel him to prove his relationship (c).

The following is a specimen of an allegation propounding an interest:—

### *Allegation.*

That the said Elizabeth Moore, the party in this cause, deceased, departed this life in or about the month of January, 1806, having, whilst living, made and duly executed her last will and testament in writing, bearing date the 23d day of February, 1784, and also a codicil thereto, bearing date the 10th day of November, 1785, but did not, either in the said will or codicil, name any executor or residuary legatee. That the said Elizabeth Moore so departed this life a widow, without child or parent, brother or sister, uncle or aunt, nephew or niece, cousin-german or cousin-german once removed, leaving behind her Elizabeth Dabbs, (wife of William Dabbs,) party in this cause, her second cousin, and only next of kin, and the only person entitled to her personal estate and effects, in case she had died intestate, or to any part thereof in respect to which she died intestate; and this was and is true, &c.

Allegation  
of interest.

First.

That Thomas Saunders, the maternal great grand-father of Elizabeth Moore, the party in this cause, deceased, and of Elizabeth Dabbs, one of the parties in this cause, many years since, being a bachelor or a

Second.

(b) Hibben v. Calenberg, Lee R. 1, p. 655. Dabbs v. Chisman, and Jennens v. Beauchamp, Phill. R. 1, p. 155.

(c) Elme v. Da Costa, Phill. R. 1, p. 177.

widower, lawfully intermarried with ,  
 afterwards                      Saunders, who was then a spin-  
 ster or a widow, according to the rites and ceremonies  
 of the Church of England as by law established, but  
 precisely when, or in what parish church, the party  
 proponent hath not been able to discover. That the  
 said Thomas Saunders and his said wife consummated  
 their said marriage by carnal copulation and the pro-  
 creation of children, and lived and cohabited together,  
 as lawful husband and wife, at East Wittering, in the  
 county of Sussex, and at other places, during all which  
 times they constantly owned and acknowledged each  
 other to be lawful husband and wife, and for and as  
 such they were commonly accounted, reputed, and  
 taken by and amongst their relations, friends, neigh-  
 bours, and acquaintances ; and this, &c.

Third.

That the said Thomas Saunders had issue by the  
 said                      Saunders, his wife, one son and two  
 daughters, called and known by the name of Thomas,  
 Ann, and Elizabeth, respectively. And the party pro-  
 ponent doth allege and propound that the said  
 Thomas Saunders, the son of the said Thomas Saun-  
 ders and                      Saunders, departed this life

many years since, a bachelor, but in what place or pre-  
 cisely at what time the said Thomas Saunders was in-  
 terred, the party proponent hath not been able to  
 discover. And the party proponent doth further allege  
 and propound that the said Thomas Saunders and

                    Saunders, his wife, constantly and on all  
 occasions owned and acknowledged the said Thomas  
 Saunders, Ann Saunders, and Elizabeth Saunders as  
 and for their natural and lawful children, and the said  
 Thomas Saunders, Ann Saunders, and Elizabeth Saun-  
 ders at all times owned and acknowledged the said



**Thomas Saunders and                          Saunders as and for  
their natural and lawful father and mother, and as and  
for persons so related to each other they, the said  
Thomas Saunders and                          Saunders his wife, and  
Thomas Saunders, Ann Saunders, afterwards Bennett,  
and Elizabeth Saunders, afterwards Faith, were com-  
monly accounted, reputed, and taken by and amongst  
their friends, relations, acquaintances, and others. And  
the party proponent doth further allege and propound  
that the said Ann Saunders, afterwards Bennett, the  
daughter of the said Thomas Saunders and  
Saunders, was the lawful grandmother of Elizabeth  
Moore, the party in this cause deceased; and that Eli-  
zabeth Saunders, afterwards Faith, also the daughter  
of the said Thomas Saunders and                          Saunders,  
was the lawful grandmother of Elizabeth Dabbs, party  
in this cause, deceased; and this, &c.**

That Thomas Saunders, in the two next preceding **Fourth.**  
articles mentioned as the natural and lawful father of  
Thomas Saunders, Ann Saunders, and Elizabeth Saun-  
ders, departed this life in the year 1694, a widower,  
having first made and duly executed his last will and  
testament in writing, and thereof appointed his son,  
Thomas Saunders, and his daughters, Ann Saunders  
and Elizabeth Saunders, executors, who, in or about  
the month of May, in the said year, duly proved the  
said will in the Consistorial and Episcopal Court of the  
Lord Bishop of Chichester, as the natural and lawful  
children and the executors named in the said will of  
the said deceased; and this, &c.

That in further supply of proof of the premises mentioned and set forth in the next preceding article of this allegation, and to all other intents and purposes in the

law whatsoever, the party proponent doth exhibit, hereto, annex, and pray to be here read and inserted, and taken as part and parcel hereof, a certain paper writing or exhibit marked with the letter A, and doth allege and propound the same to be and contain a true office copy of the said last will and testament of Thomas Saunders, deceased, together with the act of court on granting probate thereof to the said Thomas Saunders, the son, and Ann Saunders and Elizabeth Saunders, the daughters of the said deceased, and the executors in his said will, named and appointed as in the next preceding article is mentioned. That the same hath been faithfully extracted from the records of the Consistorial and Episcopal Court of the Lord Bishop of Chichester, now remaining in the registry of the said court, and carefully collated and found to agree with the originals now remaining in the said registry. That all and singular the contents of the said exhibits were and are true, and all things were so had and done as are therein contained, and that Thomas Saunders, of East Wittering, in the said exhibit mentioned as deceased, and Thomas Saunders, the natural and lawful father of Thomas Saunders, Ann Saunders, and Elizabeth Saunders, and the natural and lawful maternal great grandfather of the said Elizabeth Moore, the party deceased in this cause, and Elizabeth Dabbs, one of the parties in this cause, was and is one and the same person, and not divers; and that Thomas Saunders, in the said exhibit mentioned as the natural and lawful son and executor of the will of Thomas Saunders, and Thomas Saunders, the son of Thomas Saunders and  
Saunders, the natural and lawful

great grandfather and great grandmother of Elizabeth Moore, the party deceased, and also of the said Elizabeth Dabbs, one of the parties in this cause, and Thomas Saunders, in the third article of this allegation mentioned, was and is one and the same person, and not divers; and that Ann Saunders, in the said exhibit mentioned as the natural and lawful daughter and an executrix of the will of Thomas Saunders, deceased, and Ann Saunders, afterwards Bennett, the daughter of Thomas Saunders and Saunders, his wife, hereinbefore mentioned, and the grandmother of Elizabeth Moore, the party deceased, was and is one and the same, and not divers; and that Elizabeth Saunders, also in the said exhibit mentioned as the natural and lawful daughter and an executrix of the will of the said Thomas Saunders, deceased, and Elizabeth Saunders, afterwards Faith, the daughter of Thomas Saunders and Saunders, his wife, hereinbefore mentioned, and the grandmother of Elizabeth Dabbs, one of the parties in this cause, was and is one and the same person, and not divers; and this, &c.

That Ann Saunders, in the foregoing articles of this allegation, mentioned as the daughter of Thomas Saunders and Saunders, his wife, and as the grandmother of Elizabeth Moore, the party in this cause, deceased, also in the said articles mentioned, being a spinster, and free from all matrimonial contracts and engagements, in or about the month of April, in the year 1696, duly and lawfully intermarried with Nathaniel Bennett, of Birdham, in the county of Sussex, then a bachelor, and free from all matrimonial contracts and engagements, at Birdham aforesaid, according to the rites and ceremonies of the Church of

Sixth.

England, as by law established, and an entry of such marriage was made in the register-book of marriages kept in and for the said parish. And the party proponent doth further allege and propound that the said Nathaniel Bennett and Ann Bennett, formerly Saunders, consummated such their marriage by carnal copulation and procreation of children, and lived and cohabited together as lawful husband and wife at Birdham aforesaid, and in the city of Chichester, and at other places, during all which times they so constantly owned and acknowledged each other, and as and for lawful husband and wife they, the said Nathaniel Bennett and Ann Bennett, formerly Saunders, were commonly accounted, reputed, and taken by and amongst their several relations, neighbours, and acquaintances until the time of their respective deaths. And that the party proponent doth further allege and propound that the said Ann Bennett, formerly Saunders, the wife of the said Nathaniel Bennett, was the lawful grandmother of the said Elizabeth Moore, the party in this cause deceased, and was also the great aunt of Elizabeth Dabbs, one of the parties in this cause; and this &c.

Seventh.

That in part supply of proof of the premises mentioned and set forth in the next preceding article of this allegation, and to all other intents and purposes in the law whatsoever, the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter B, and doth allege and propound the same to be and contain a true copy of the entry of the marriage of the said Ann Saunders, afterwards Bennett, and the said Nathaniel Bennett, in the said article mentioned. That the same hath been faithfully ex-

tracted from the register-book of marriages kept in and for the parish of Birdham, in the county of Sussex, hath been carefully collated with the original entry now remaining therein, and found to agree therewith ; that all and singular the contents thereof were and are true, and that all things were so had and done as therein contained ; and the party proponent doth further allege and propound, that Ann Saunders, therein mentioned as the wife of Nathaniel Bennett, and Ann Saunders, afterwards Bennett, the lawful grandmother of Elizabeth Moore, the party in this cause deceased, and the great aunt of Elizabeth Dabbs, one of the parties in this cause, was and is one and the same person, and not divers ; and this, &c.

That the said Nathaniel Bennett had issue by the said Ann Bennett, (formerly Saunders, his wife,) three sons, two of whom were duly baptized in the parish church of Saint Peter the Great, *alias* Subdeanery, in the city of Chichester, by the names of Nathaniel and Benjamin respectively, and as the children of the said Nathaniel Bennett ; that is to say, the said Nathaniel Bennett on or about the 21st day of September, 1697, and the said Benjamin Bennett on or about the 19th day of August, 1702, and entries of such baptisms were duly made in the register-book of baptisms kept in and for the said parish of Saint Peter the Great, *alias* Subdeanery, but in what place or at what time Thomas Bennett, the eldest son of the said Nathaniel Bennett and Ann Bennett, was baptized, or whether he was ever baptized at all, the party proponent hath been unable to discover. And the party proponent doth further allege and propound, that the said Nathaniel Bennett and Benjamin Bennett both departed this life bache-

Eighth.

lors, to wit, the said Nathaniel Bennett in or about the month of May, in the year 1725, and was interred in the churchyard belonging to the said parish of Saint Peter the Great, *alias* Subdeanery, and the said Benjamin Bennett in or about the month of July, 1777, and was interred in the churchyard belonging to the said parish; and the party proponent doth further allege and propound, that the said Thomas Bennett, the son of the said Nathaniel Bennett and Ann Bennett, was the natural and lawful father of Elizabeth Moore, the party in this cause, deceased, and the cousin-german once removed of Elizabeth Dabbs, one of the parties in this cause; and this, &c.

Ninth.

That in part supply of proof, &c., a certain paper writing or exhibit marked with the letter C, and doth allege and propound the same to be and contain true copies of the entries of the baptisms of Nathaniel Bennett the younger and Benjamin Bennett, in the said article mentioned; that the same hath been faithfully extracted, &c. That all and singular the contents, &c., and that Nathaniel Bennett and Benjamin Bennett, therein mentioned as the sons of the said Nathaniel Bennett and Ann, his wife, and Nathaniel Bennett and Benjamin Bennett, who died bachelors, as in the next preceding article is set forth, and who were the natural and lawful brothers of Thomas Bennett, the father of Elizabeth Moore, the party deceased in this cause, were and are respectively the same persons, and not divers; and this, &c.

Tenth.

That in further supply of proof of the premises mentioned and set forth in the eighth article of this allegation, &c., a certain paper writing or exhibit marked with the letter D, and doth allege and propound the

same to be and contain true copies of the entries of the burials of the said Nathaniel Bennett and Benjamin Bennett, in the eighth and ninth articles of this allegation mentioned. That the same hath been faithfully extracted from the register-book of burials kept in and for the parish of Saint Peter the Great, *alias* Sub-deanery, in the city of Chichester, &c. That Nathaniel Bennett and Benjamin Bennett, in the said exhibit mentioned, and Nathaniel Bennett and Benjamin Bennett, the sons of Nathaniel and Ann Bennett, and the brothers of Thomas Bennett, in the said eighth and ninth articles of this allegation mentioned, and Nathaniel Bennett and Benjamin, the uncles of Elizabeth Moore, the party in this cause deceased, were and are the same persons, and not divers; and this, &c.

That Thomas Bennett, in the three preceding articles of this allegation mentioned, being a bachelor, and free from all matrimonial contracts and engagements, did make his courtship and addresses, in the way of marriage, to Elizabeth Chisman, of the parish of Saint Pancras, in the city of Chichester aforesaid, who was then a spinster, and also free from all matrimonial contracts and engagements, and consented to be married to him, and accordingly, in or about the month of January, 1728, they the said Thomas Bennett and Elizabeth Chisman were lawfully joined together in holy matrimony, according to the rites and ceremonies of the Church of England, as by law established, in the chapel of the palace of the Bishop of Chichester, situate in Chichester aforesaid, and an entry of such marriage was duly made in the register-book of marriages kept in and for the said chapel. And the party proponent doth further allege and propound, that the said Thomas Ben-

Eleventh.

nett and Elizabeth Chisman consummated their said marriage by carnal copulation and the procreation of a child, and lived and cohabited together as lawful husband and wife at Chichester aforesaid, and at other places, and constantly owned and acknowledged each other to be, and as and for lawful husband and wife they were commonly accounted, reputed, and taken by and amongst their relations, friends, acquaintances, and others; and the party proponent doth further allege and propound, that the said Thomas Bennett and Elizabeth Chisman, his wife, were the natural and lawful father and mother of Elizabeth Moore, party in this cause deceased; and the said Thomas Bennett was the cousin-german once removed of Elizabeth Dabbs, one of the parties in this cause; and this was, &c.

Twelfth.

That in supply of proof of part of the premises mentioned and set forth in the next preceding article of this allegation, &c., the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter E, and doth allege and propound the same to be and contain a true copy of the entry of the marriage of the said Thomas Bennett and Elizabeth Chisman, in the said article mentioned, &c. &c. That Thomas Bennett and Elizabeth Chisman, in the said exhibit mentioned, and Thomas Bennett, hereinbefore mentioned, and Elizabeth Chisman, afterwards Bennett, the natural and lawful father and mother of Elizabeth Moore, party in this cause, deceased, were and are one and the same persons, and not divers; and that Thomas Bennett, in the said exhibit mentioned, and Thomas Bennett, the cousin-german once removed of Elizabeth Moore, party in this cause, was and is one and the same person, and not divers; and this, &c.



That the child who was the issue of the said Thomas Bennett by Elizabeth, his said wife, was a daughter, who was, on or about the 31st day of January, in the year 1734, duly baptized in the parish church of Saint Peter the Great, *alias* Subdeanery, in the city of Chichester, by the name Elizabeth, and as the daughter of the said Thomas and Elizabeth Bennett, and an entry of such baptism was made in the register-book of baptisms kept in and for the said parish of Saint Peter the Great, *alias* Subdeanery; and the party proponent doth further allege and propound, that the said Thomas Bennett and Elizabeth Bennett, formerly Chisman, his wife, constantly and on all occasions owned and acknowledged the said Elizabeth Bennett as and for their natural and lawful daughter, and the said Elizabeth Bennett constantly owned and acknowledged the said Thomas Bennett and Elizabeth Bennett, formerly Chisman, to be her natural and lawful father and mother; and the party proponent doth further allege and propound, that the said Elizabeth Bennett, (who, as is hereinafter pleaded, lawfully intermarried with William Moore, deceased,) the daughter of the said Thomas Bennett and Elizabeth Bennett, his wife, was and is the party deceased and the second cousin of Elizabeth Dabbs, one of the parties in this cause; and this was, &c.

That in supply of proof of the premises, &c., the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter F, and doth allege and propound the same to be and contain a true copy of the entry of the baptism of the said Elizabeth Bennett, in the said article mentioned, &c. That Elizabeth Bennett, in the said exhibit mentioned as the daughter of Thomas and Elizabeth Bennett, and Eliza-

Thirteenth.

Fourteenth.

beth Bennett, afterwards Moore, the wife, and late the widow of William Moore, deceased, and Elizabeth Moore, widow, the party in this cause, deceased, the second cousin of Elizabeth Dabbs, one of the parties in this cause, was and is one and the same person, and not divers; and this, &c.

Fifteenth.

That Elizabeth Bennett, in the two next preceding articles of this allegation mentioned as the daughter of Thomas Bennett and Elizabeth Bennett, formerly Chisman, and the party in this cause, deceased, being a spinster, and free from all matrimonial contracts and engagements, did, in or about the month of May, 1760, duly and lawfully intermarry with William Moore, then a bachelor, and also free from all matrimonial contracts and engagements, in the parish church of Saint Peter the Great, *alias* Subdeanery, in the city of Chichester aforesaid, according to the rites and ceremonies of the Church of England, as by law established, and an entry of such marriage was duly made in the register-book of marriages kept in and for the said parish; and the party proponent doth further allege and propound that the said William Moore and Elizabeth Moore, formerly Bennett, lived and cohabited together, as lawful husband and wife, at Esher, in the county of Surrey, and during such their cohabitation as and for husband and wife they constantly owned and acknowledged each other, and were commonly accounted, reputed, and taken to be so by and amongst their several relations, friends, acquaintances, and others until the times of their respective deaths, but of which marriage they, the said William Moore and Elizabeth Moore, formerly Bennett, had no issue; and the party proponent doth further allege and propound

that the said William Moore, in or about the year 1796, departed this life at Esher aforesaid, leaving her, the said Elizabeth Moore, (the party in this cause, deceased,) his lawful widow and relict, him surviving; and this, &c.

That in supply of proof of part of the premises, &c., Sixteenth.  
the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter G, and doth allege and propound the same to be and contain a true copy of the entry of the marriage of the said Elizabeth Bennett and William Moore, &c. That Elizabeth Bennett, in the said exhibit mentioned as a spinster, and as having been married to the said William Moore, and Elizabeth Moore, widow, the party in this cause, deceased, and the second cousin of Elizabeth Dabbs, one of the parties in this cause, was and is one and the same person, and not divers; and this, &c.

That in or about the month of July, in the year Seventeenth.  
1695, Elizabeth Saunders, in the sixth and seventh articles of this allegation mentioned as the daughter of Thomas Saunders and as the grandmother of Elizabeth Dabbs, one of the parties in this cause, being a spinster, and free from all matrimonial contracts and engagements, duly and lawfully intermarried with John Faith, of Sidlesham, in the county of Sussex, then a bachelor, and also free from all matrimonial contracts and engagements, according to the rites and ceremonies of the Church of England, as by law established, by virtue of a license obtained during a visitation of the Right Reverend the Lord Bishop of Chichester, on or about the 6th day of July, in the said year 1695. That an entry thereof was made in the records of the said Lord Bishop of Chichester, in the diary-book kept on

the said visitation, in the words and figures, or to the effect following, to wit, "6 July, 1695, Lencia inter Johem Faith, de Sidlesham, celebem, et Eliz. Saunders, de Cicestr. puell."; but the party proponent hath not been enabled to discover at what church or time the said marriage took place, or in what register an entry of the same is made. That the said John Faith and Elizabeth Faith, formerly Saunders, consummated such their marriage by carnal copulation and the procreation of children, and lived and cohabited together, as lawful husband and wife, at Sidlesham aforesaid, and at other places, and constantly owned and acknowledged each other to be, and as and for such they, the said Elizabeth Saunders and John Faith, were commonly accounted, reputed, and taken by and amongst their respective relations, friends, acquaintances, and others until the times of their respective deaths; and the party proponent doth further allege and propound, that the said Elizabeth Saunders, afterwards Faith, the wife of the said John Faith, was the natural and lawful daughter of Thomas Saunders, in the second and other preceding articles of this allegation mentioned, and the lawful grandmother of Elizabeth Dabbs, one of the parties in this cause, and was also the great aunt of Elizabeth Moore, widow, the party deceased in this cause, and was the natural and lawful sister of Ann Saunders, afterwards Bennett, the wife of Nathaniel Bennett, also many times in the preceding articles of this allegation mentioned; and this, &c.

**Eighteenth.**

That the said John Faith had issue by the said Elizabeth Saunders, afterwards Faith, his wife, three sons, who were duly baptized at Sidlesham, in the county of Sussex, by the names of John, Richard, and

Thomas, respectively, and as the children of the said John Faith and Elizabeth Faith, his wife; that is to say, the said John Faith, on or about the 12th day of January, 1700; the said Richard Faith, on or about the                    day of                    , 1701; and the said Thomas Faith, on or about the 17th day of May, 1702. That entries of such baptisms were duly made in the register-book of baptisms kept in and for the parish of Sidlesham, in the county of Sussex aforesaid, but that the leaves of the said original register-book, containing the entries of persons baptized in the said parish from the 30th day of March, 1701, to the 16th day of April, 1704, were and are torn out or otherwise destroyed, and not to be found in the said original register-book, save and except the entries of the baptisms of four persons, who were baptized within the said period by dissenting ministers, and which entries are made on one side of a leaf of the said register-book; and the party proponent doth further allege and propound, that no register-bill containing the names of the persons baptized in the said parish of Sidlesham, from the said visitation in the year 1701, was transmitted to the Bishop of the diocese of Chichester or his chancellor, or if any such bill was transmitted, the same has been destroyed, lost, or mislaid, and cannot be found, so that there is not any register of baptisms for the said parish for the years 1702 and 1703; and the party proponent doth further allege and propound that the said John Faith and Thomas Faith both departed this life many years since, to wit, the said John Faith on or about the 24th day of December, in the year 1777, and the said Thomas Faith on or about the 26th day of January, in the year 1725, and were both

interred in the burial-ground belonging to the parish of Sidlesham aforesaid; and the party proponent doth further allege and propound, that the said Richard Faith, the son of the said John Faith and Elizabeth Saunders, afterwards Faith, was the natural and lawful father of Elizabeth Dabbs, party in this cause, and the cousin-german once removed of Elizabeth Moore, the party in this cause, deceased; and that the said John Faith and Thomas Faith, the other sons of the said John Faith and Elizabeth Saunders, afterwards Faith, were the lawful uncles of Elizabeth Dabbs, one of the parties in this cause, and cousin-german once removed of Elizabeth Moore, widow, the party in this cause, deceased; and this was, &c.

Nineteenth. That in supply of proof, &c., the party proponent doth exhibit, &c., a certain paper writing or exhibit, marked with the letter H, and doth allege and propound the same to be and contain true copies of the entries of the burials of John Faith and Thomas Faith, (the sons of John Faith and Elizabeth Faith, formerly Saunders,) in the said articles mentioned, &c., &c. That John Faith and Thomas Faith, in the said exhibit mentioned, and John Faith and Thomas Faith, the sons of John Faith and Elizabeth Faith, severally mentioned in the two next preceding articles of this allegation, and John Faith and Thomas Faith, the lawful uncles of Elizabeth Dabbs, one of the parties in this cause, and the cousins-german once removed of Elizabeth Moore, the party deceased in this cause, were and are the same persons, and not divers; and this was, &c.

Twentieth. That Richard Faith, in the three preceding articles of this allegation mentioned as the son of John Faith and

Elizabeth Saunders, afterwards Faith, being a bachelor, and free from all matrimonial contracts and engagements, in or about the month of October, 1730, duly and lawfully intermarried with Hannah Stout, then a spinster, and also free from all matrimonial contracts and engagements, at Rumboldswyke, in the county of Sussex, according to the rites and ceremonies of the Church of England, as by law established, and an entry of such marriage was duly made in the register-book of marriages kept in and for the said parish of Rumboldswyke; and the said Richard Faith and Hannah Faith, formerly Stout, consummated such their marriage by carnal copulation and the procreation of a child, and lived and cohabited together, as lawful husband and wife, at Sidlesham, in the said county of Sussex, and at other places, and constantly and on all occasions owned and acknowledged each other to be, and as and for lawful husband and wife, they, the said Richard Faith and Hannah Stout, afterwards Faith, were commonly accounted, reputed, and taken by and amongst their relations, friends, acquaintances, and others until the time of their respective deaths; and the party proponent doth further allege and propound, that the said Richard Faith and Hannah Stout, afterwards Faith, his lawful wife, were the natural and lawful father and mother of Elizabeth Dabbs, one of the parties in this cause, and the said Richard Faith was the cousin-german once removed of Elizabeth Moore, widow, the party in this cause, deceased; and this, &c.

That in supply of proof of part of the premises, &c., Twenty-first. the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter I, and doth allege and propound the same to be and contain a true

copy of the entry of the marriage of the said Richard Faith and Hannah Stout, in the said article mentioned, &c. That Richard Faith and Hannah Stout, in the said exhibit mentioned, and Richard Faith and Hannah Faith, formerly Stout, the natural and lawful father and mother of Elizabeth Dabbs, party in this cause, were and are the same persons, and not divers, and that Richard Faith, in the said exhibit mentioned, and Richard Faith, the cousin-german once removed of Elizabeth Moore, the party deceased in this cause, was and is the same person, and not divers; and this, &c.

Twenty-second.

That the said Richard Faith had issue by the said Hannah Stout, afterwards Faith, his wife, a daughter, who was, on or about the 24th day of August, in the year 1735, duly baptized by the name of Elizabeth, and as the daughter of the said Richard Faith and Hannah Faith, and is the party in this cause; but in what place or in what register an entry of such baptism was made the party proponent hath not been able to discover. That the said Richard Faith, the father of the said Elizabeth Faith, did, on the birth of the said child, duly make an entry, in his own handwriting, of the birth and baptism of the said Elizabeth Faith, in a Bible belonging to him, and which was used in his said family for the purpose of recording the times of the births of different members of the said family. That after the death of him, the said Richard Faith, the said Bible became the property of his only son, Richard Faith, of Denton, in the county of Kent, and was kept in his custody so long as he lived, to wit, till some time in or about the year 1795, when he departed this life, since which the said Bible hath been the property and in the custody and possession of Richard Faith, son of



the last-mentioned Richard Faith, of Denton aforesaid, in whose possession the same still remains; and the party proponent doth further allege and propound, that the said Elizabeth Faith, the issue of the said marriage, afterwards duly and lawfully intermarried with William Dabbs, of Westborough Green, in the county of Sussex; and the party proponent doth further allege and propound that the said Richard Faith and Hannah, his wife, upon all occasions, to the time of their respective deaths, owned and acknowledged the said Elizabeth Faith, now Dabbs, to be their natural and lawful daughter, and she, the said Elizabeth Faith, now Dabbs, constantly owned and acknowledged the said Richard Faith and Hannah, his wife, to be her natural and lawful father and mother, and as and for such were commonly accounted, reputed, and taken by and amongst their several relations, friends, acquaintances, and others; and the party proponent doth further allege and propound, that the said Elizabeth Faith, who is, as hereinbefore pleaded, lawfully intermarried with William Dabbs, the daughter of the said Richard Faith and Hannah Faith, was and is the party in this cause, and the lawful second cousin of Elizabeth Moore, widow, the party in this cause, deceased; and this, &c.

That in supply of proof, &c., the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter K, and doth allege and propound the same to be and contain a true copy or extract of the entry made, as to the time of the birth and baptism of the said Elizabeth Faith, in the family Bible in the next preceding article mentioned; that the same hath been faithfully extracted, &c., and that the original will be produced at the hearing of this cause, if

Twenty-  
third.

necessary, &c. That Elizabeth Faith, therein mentioned as the daughter of Richard Faith and Elizabeth Faith, now Dabbs, the wife of William Dabbs, the party in this cause, and the second cousin of Elizabeth Moore, the party in this cause, deceased, was and is one and the same person, and not divers ; and this, &c.

Twenty-fourth.

That in further supply of proof, &c., the party proponent doth exhibit, &c., a certain paper writing or exhibit marked with the letter L, and doth allege and propound the same to be and contain a true copy of the entry of the marriage of the said William Dabbs and Elizabeth Faith, afterwards Dabbs, &c. That Elizabeth Faith, therein mentioned as having been married to William Dabbs, and Elizabeth Dabbs, wife of William Dabbs, formerly Faith, party in this cause, and the second cousin of Elizabeth Moore, the party in this cause, deceased, was and is one and the same person, and not divers ; and this, &c.

Twenty-fifth.

That all and singular the premises were and are true, and so forth.

There is a minor kind of interest cause, where the quality or degree of interest, and not the absolute fact of its existence is in dispute. And this frequently arises between the next friends of a minor, or infant, where each claim to be appointed curator, or between the creditors of a deceased, whose estate has been abandoned by his next of kin on account of its insolvency, &c.

This proceeding is conducted by act on petition and affidavits.

The act on petition is a pleading in the following form :—

*Act on Petition.*

In the Prerogative Court of Canterbury.

Act on pe-  
tition.

On the first session of Trinity Term, to wit, Saturday, the 25th day of May, 1844, before the Right Honourable the Judge sitting in judgment in the Common Hall of Doctors' Commons, London, present John Iggulden, one of the Deputy Registrars.

DAVIES *against* LEWES.

Buckton.

Fielder.

In the goods of James Lewes, deceased.

<p>A business of committing and granting letters of administration of all and singular the goods, chattels, and credits of James Lewes, late of Cwmhyar, in the county of Cardigan, widower, deceased, to John Davies, the natural and lawful grandfather and next of kin, and curator or guardian, assigned, by virtue of the office of the judge, to Priscilla Willey Lewes, spinster, an infant, (to wit, of the age of five years,) the natural and lawful and only child of the said deceased, for the use and benefit of the said Priscilla Willey Lewes until she shall attain the age of twenty-one years,</p>	<p>On which day Fielder exhibited, as proctor for John Davies and alleged his said party to be the lawful grandfather and next of kin, and curator or guardian, lawfully assigned, to wit, by virtue of the order or decree of a surrogate of this court, of the said Priscilla Willey Lewes, spinster, and brought in a proxy under the</p>
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promoted by the said John Davies against John Lewes, the lawful paternal uncle of the said infant.

hand and seal of his said party and act of court, sped on the admission thereof,

and prayed letters of administration of all and singular the goods, chattels, and credits of the said deceased to be committed and granted to his said party, as such guardian, for the use and benefit of the said Priscilla Willey Lewes until she shall attain the age of twenty-one years. Then Buckton exhibited a proxy under the hand and seal of the said John Lewes, and alleged his said party to be the lawful paternal uncle of the said infant, and by way of objection to the said John Davies's appointment to the office of guardian of the said infant, and to the grant of letters of administration of the goods of the said deceased to him, the said John Davies, as such, alleged that the said John Davies is a person of drunken and dissipated habits, and is also nearly eighty years of age; that by reason of the premises, he, the said John Davies, is not in a fit state, either of mind or body, to undertake the guardianship of the said infant, and thereby the management of her said late father's estate, and that he hath himself so admitted on several occasions, and in particular to Richard Pugh, of Carmarthen, so late as on the 19th of May last; and Buckton further alleged that the said deceased always entertained and expressed great dissatisfaction and disgust at the conduct and mode of life of the said John Davies, and had for some time prior to his death refused to see or speak to him, and that in particular he so did on the last occasion of the said John Davies calling upon him, only very shortly

prior to his death. And on the other hand, Buckton alleged that the said deceased always entertained and expressed the greatest attachment to and confidence in his brother, the said John Lewes, and frequently said that he relied on his said brother to take care of his child after his, the deceased's, death, and that shortly before that event, when advised by John Phillips, of Newcastle, Emlyn, in the county of Cardigan, surgeon, to make his last will, in order thereby amongst other things to appoint a guardian to his said child, the said deceased declared to him, the said John Phillips, in particular that he had no doubt that his brother, (meaning the said John Lewes,) would take care of his little girl, (meaning his daughter, the said Priscilla Willey Lewes,) or to that very effect; and Buckton also alleged that the said Priscilla Willey Lewes has been under the care and protection and residing in the house of the said John Lewes ever since the death of the said deceased, and is still so residing, and that the said John Lewes, who has no family of his own, was and is desirous of adopting his said niece, for whom he has also provided a competent governess, his said niece, moreover, being greatly attached to her said uncle, and totally unacquainted with her grandfather, the said John Davies; and that in proceedings now depending in the High Court of Chancery, relative to the guardianship of the said infant, on the 24th day of March last a reference was duly made to a master, to report as to the proper person to be appointed guardian of the said infant, in the result of which proceedings he, Buckton, confidently anticipates that his party, the said John Lewes, will be appointed such guardian by authority of that court. And Buckton lastly

alleged, that his said party is a person of considerable property, and in a respectable rank in life, and, on the other hand, that the said John Davies is in needy circumstances, and moreover is a debtor to the estate of the said deceased, in the sum of one hundred and eighty pounds, or thereabouts; and, in verification of what he so alleged, Buckton craved leave to refer to certain affidavits to be by him exhibited and brought into the registry of this court, and prayed the Right Honourable the Judge to rescind the surrogate's order or decree hereinbefore referred to, and to assign his, Buckton's, said party curator, or guardian of the said infant, by virtue of his office, and further to decree letters of administration of all and singular the goods, chattels, and credits of the said deceased to be committed and granted to his said party as such guardian, for the use and benefit of the said infant, until she shall attain the age of twenty-one years, and to condemn Fielder's party in the costs of this petition.

In the presence of Fielder dissenting and denying the allegation of Buckton in great part to be true; first, he Fielder expressly denied that his party, the said John Davies, is a person of drunken and dissipated habits, or that he, the said John Davies, is, by reason of the premises alleged, not in a fit state, either of mind or body, to undertake the guardianship of the said infant, and thereby the management of her said late father's estate, and that he hath himself so admitted on several occasions, and in particular to the said Richard Pugh, as untruly alleged by Buckton, for he, Fielder, expressly alleged that his said party, the said John Davies, is particularly abstemious in his habits and mode of living, and is in a fit state, both as regards his mind and

body, to undertake the management of the property of the said infant; and that, in respect to the pretended admission of his said party, he further expressly alleged that the said Richard Pugh referred to by Buckton, an attorney's clerk, and friend and associate of his, Buckton's, said party, on the day of the funeral of the said deceased called upon his, Fielder's, said party, the said John Davies, at the house of his son, the Reverend Thomas Howell Davies, Rector of Llangunllo, in the county of Carmarthen, and on such occasion he, the said Richard Pugh, wished his said party to consent that the guardianship of the said infant and the management of her property should be given to Buckton's said party, the said John Lewes, and that whatever statement his said party may then have made was so made by his said party with the view, and in order that his son, the said Reverend Thomas Howell Davies, who is Rector of the parish of Llangunllo aforesaid, and married to a lady of good family and connexions, and who is willing to undertake the personal charge and care and education of the said infant, might be appointed, and that his said party did not, either on such or any other occasion, in any manner consent to the guardianship and management of the said infant being given to the said John Lewes, and Fielder protesting against the relevancy of what is alleged as to what the deceased may have ever said of his said party, further expressly denied that the said deceased always expressed great dissatisfaction and disgust at the conduct and mode of life of his said party or that he had for some time prior to his death refused to see or speak to him, and that in particular that he did so on the last occasion of the said John Davies calling upon him only very shortly

prior to his death. On the contrary, he expressly alleged that his said party was on the most friendly terms with his son-in-law, the said deceased, and continued so to the time of his death, and that the only time he ever failed to see him was on an occasion happening a short time before the death of the said deceased, when he was much exhausted by his last illness and unfit to see visitors; and he, Fielder, protesting altogether against the relevancy of what is alleged as to the expressions used by the deceased relating to his brother, denied that the said deceased always entertained and expressed the greatest confidence in his brother, the said John Lewes, and frequently said that he relied on his said brother to take care of his child; and Fielder expressly alleged that Buckton's said party, the said John Lewes, in the year 1825 took the benefit of the act for the relief of insolvent debtors. That in order thereto, he duly filed his schedule as an insolvent debtor; that he therein stated his debts to amount to the sum of three thousand one hundred and eight pounds, which have for the most part never since been liquidated; that he is, moreover, a person of confirmed drunken and dissipated habits, that he constantly associates with and becomes intoxicated in the society of persons of the lowest condition and character, and with respect to what is alleged by Buckton as to the said infant having been under the care and protection and residing in the house of the said John Lewes ever since the death of the deceased, and her being still so residing there, Fielder alleged that, upon the death of the deceased, Buckton's said party came to reside in the house in which the deceased had died called Cwmhyar, and took upon himself, without any sufficient authority, the



control thereof, and sold the farming stock and assumed the care and control of the said infant, and hath ever since continued, and still continues so to do ; and he, Fielder, further alleged, that the proceedings now depending in the High Court of Chancery relative to the guardianship of the said infant referred to by Buckton were instituted by the aforesaid Reverend Thomas Howell Davies, (the son of his said party,) whom he, Fielder, confidently anticipates will be appointed guardian of the said infant by the authority of the said court, and not his, Buckton's, said party ; and he, Fielder, expressly denied that his said party, the said John Davies, is in necessitous circumstances and a debtor to the estate of the said deceased in the sum of one hundred and eighty pounds, or thereabouts, as untruly alleged by Buckton, for he expressly alleged that his said party is not indebted to the estate of the said deceased in any sum whatever, being in perfect independent circumstances ; and Fielder lastly alleged that the personal property to be administered for the benefit of the said infant amounts to the sum of thirteen thousand pounds, or thereabouts, independent of real estates of the annual value of fourteen hundred pounds, or thereabouts.

Wherefore the said Fielder alleged and prayed as before, and further prayed the Right Honourable the Judge to condemn Buckton's party in the costs.

In the presence of Buckton dissenting and denying the allegations of Fielder to be true in great part, and Buckton expressly denied that the said Richard Pugh, (whom he admits to be an attorney's clerk,) is a friend or associate of his said party, or that the debts of his said party were stated by him in the schedule filed by

him on taking the benefit of the act for the relief of insolvent debtors in 1825, as alleged by Fielder, amounted to the sum of three thousand one hundred and eight pounds, or that, as also alleged by Fielder, the same for the most part have never since been liquidated; and Buckton also expressly denied that his said party is a person of confirmed drunken or dissipated habits, or constantly or ever associates with and becomes intoxicated in the society of persons of the lowest condition and character; and Buckton admitting that his said party, upon the death of the deceased, went to reside in the house called Cwmhyar, in which the deceased died, denies that he so did, or that he took upon himself the control of the said house without any sufficient authority; for, on the contrary, he alleged, that the said house is the property of his said party, and Buckton lastly alleged, that in selling the farming stock, as alleged by Fielder, and which he, Buckton, admits him to have done, he so sold the same for the benefit of the estate of the said deceased, and at the best prices, and that he is both ready and willing to account for the proceeds of such sale whenever he shall be thereto lawfully required. Wherefore Buckton prayed, as by him before prayed.

*Act on Petition.*

Act on petition.

In the Prerogative Court of Canterbury.

On the extra court-day after Hilary Term, to wit,  
Wednesday, the 28th day of February, 1844.

HOBART *against* MERRIFIELD, executrix of HOBART.  
Buckton. Nelson.

A business of granting letters of } On which day the  
administration, (with the last } Right Honour-

will and testament annexed,) of all and singular the goods, chattels, and credits of George Hobart, late of Porchester Place, Oxford Square, Paddington, in the county of Middlesex, Esquire, Major of Her Majesty's Second Regiment of Dragoons, or Scots Greys, deceased, promoted by Mary Hobart, widow, the relict of the said deceased, and a legatee named in the said will, against Mary Elizabeth Merrifield, spinster, the sole executrix of the will of the Reverend Henry Charles Hobart, Clerk, deceased, whilst living, the natural and lawful father and next of kin of the said deceased, no executor or residuary legatee being named in the said will.

ble the Judge, having read the evidence in this cause, and heard advocates and proctors on both sides thereon, at petition of Buckton, the proctor of the said Mary Hobart, widow, read, signed, promulged, and gave the sentence by the said Buckton corrected, thereby pronouncing, decreeing, and declaring for the force and validity of the last will and testament of the said George

Hobart, Esquire, deceased, bearing date the 9th day of May, 1843, and assigned to hear, on petition of both proctors, as to the grant of administration, (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased. Whereupon Nelson, as proctor for the said Mary Elizabeth Merrifield, spinster, alleged that the said deceased died on the said 9th day of May, 1843, having, whilst living and at the time of his death, goods, chattels, and credits, in divers dioceses or peculiar jurisdiction within the pro-

vince of Canterbury, sufficient to found the jurisdiction of this court; and having, whilst living, made and duly executed his last will and testament in writing, bearing date the said 9th day of May, but without therein naming any executor or residuary legatee, and further alleged that the said deceased died without a child, and left behind him the said Mary Hobart, widow, his lawful relict, and the Reverend Henry Charles Hobart, Clerk, his natural and lawful father; and the said Nelson further alleged, that in the course of the proceedings in the said cause it was pleaded, to wit, in the second article of the allegation, bearing date the second session of Michaelmas Term, to wit, Thursday, the 16th day of November, 1843, given in and admitted in the said cause, on the part and behalf of the said Mary Hobart, widow, and proved by the evidence of a competent witness examined on the said allegation, that in and by a certain indenture of settlement, bearing date the 20th day of November, 1839, made prior to, and in contemplation of, the marriage of the said deceased with the said Mary Hobart, (then Mary Walsh, spinster,) between the said deceased, of the first part, John Walsh, Esquire, of the second part, the said Mary Walsh, now Hobart, daughter of the said John Walsh, of the third part, and Henry Garnett and William Bolton Cowley, Esquires, of the fourth part, a certain provision was made, by way of jointure, for the said Mary Hobart, then Walsh, with an express proviso and agreement that the same should be in bar of all dower out of any lands of the said deceased, and of all thirds which she might otherwise be entitled to at common law, or under the Statute of Distribution, or otherwise howsoever.

And the said Nelson submitted, that, by reason of the premises, the letters of administration, (with the will annexed,) of the goods, chattels, and credits of the said deceased ought to be committed and granted to his party, Mary Elizabeth Merrifield, spinster, (whom he expressly alleged to be the sole executrix of the will of the Reverend Henry Charles Hobart, Clerk, deceased, whilst living, the natural and lawful father of the said deceased, and which will has been duly proved in this court,) rather than to the said Mary Hobart, widow, by the law and practice of this court, and prayed that such letters of administration may be committed and granted to his said party accordingly, on her giving the usual security.

In the presence of Blake, intervening in the said cause or business on behalf of John Blake, Esquire, of the city of Norwich, Solicitor, and dissenting and denying the allegation of Nelson in part to be true, and alleging and submitting that his said party, the said John Blake, is the executor according to the tenor of the aforesaid last will and testament of the said George Hobart, Esquire, deceased, and the said Blake further alleged that the said testator died on or about the 9th day of May, 1843, that the said John Blake had been for many years the friend and confidential adviser of him, the said testator, and much assisted him in the management of his affairs, and also acted for the trustees of an estate in Norfolk, in which the said George Hobart had a life interest with remainder to his issue, if any, and in reference to the said John Blake, being in the said will described as John Blake, Esquire, senior, of Saint Stephens, in the city of Norwich, the said Blake expressly alleged that his said party, the said

John Blake; hath a son named John Joseph Blake, (who is one of his partners in the firm of Blake, Keith, and Blake, of the city of Norwich, solicitors,) and that in consequence thereof his said party is sometimes called and described and addressed as John Blake, senior, and that his place of business and the offices of the firm are in the parish of Saint Stephens, in the city of Norwich; and he lastly alleged that there is no other person of the name of John Blake, who is a solicitor, in the city of Norwich. Wherefore, and upon the terms of the said will, the said Blake referring thereto, and to whatever proofs he may bring in, prayed the Right Honourable the Judge to decree probate of the said will of the said George Hobart, Esquire, deceased, to be committed and granted to his said party, the said John Blake, as the executor, according to the tenor thereof aforesaid.

In the presence of Buckton, proctor for the said Mary Hobart, widow, dissenting and denying the allegations of Nelson to be in part either true or relevant, and he alleged that his said party consented that probate of the said will of the said deceased should be granted under seal of this court to the said John Blake, Cherrill's party, as the sole executor therein named, according to the tenor thereof, as in and by a certain proxy under the hand and seal of his said party, to be by him exhibited and brought into the registry of this court, will appear; but, in the event of letters of administration, (with the said last will and testament,) of the effects of the said deceased being decreed to the said Elizabeth Merrifield, spinster, (Nelson's party,) then the said Buckton, prayed the Right Honourable the Judge of this court to be pleased to direct justify-

ing security to be given by her, the said Elizabeth Merrifield; and Buckton lastly prayed that the Right Honourable the Judge would be pleased to decree the costs of his said party in this suit and of this petition to be paid out of the estate of the said deceased.

In the presence of Nelson, submitting to the judgment of the court, whether Blake's party is, as alleged, the executor according to the tenor of the said will of the said George Hobart, Esquire, deceased, and not objecting to the probate of the said will passing to him as such, on the part of his, Nelson's, said client.

In the presence of Buckton, and Blake alleging and praying as before. Whereupon the Right Honourable the Judge, at petition of all proctors, assigned to hear his pleasure thereon whensoever.

When the pleading is finished the affidavits are filed, and the petition assigned for hearing. A final interlocutory decree determines the question at issue between the litigants.

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## INVENTORY AND ACCOUNT.

EVERY executor or administrator is obliged, by virtue of the oath administered to him by the ordinary, to exhibit a sworn inventory of the personal effects of the deceased, and to render an account of his executorship or administration when thereunto lawfully required; and in addition to this obligation, the admi-

nistrator also enters into a bond to the ordinary the to same effect (a).

After probate or letters of administration have been granted, any person having an interest in the estate, though it may only be probable or contingent, has a right to require an inventory or account (b).

The usual limitation of time allowed by the court before an inventory can be called for is six calendar months, and in respect of an account, twelve months are given; but they are usually called for at the same time; i. e., after the expiration of the year.

A suit of this nature is instituted at the instance of a creditor, a legatee, residuary legatee, or next of kin.

The citation issues from the court in which the letters of administration or probate were granted and is in the following form, viz.:—

### *Citation.*

Citation for  
inventory and  
account.

William, by Divine Providence Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting:

We do hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, Jane Plant, (wife of Thomas Plant,) heretofore Hellings, widow, the relict and sole executrix named in the last will and testament

(a) *Kenny v. Jackson*, Hagg. 1, p. 106. *Hackman v. Black*, Lee 2, p. 252. (b) *Roberts v. Roberts*, Lee R. 2, p. 399. *Reeves v. Freeling*, Phill. 2, p. 57. *Phillips v. Bignell*, Phill. 1, p. 241.



of Charles Hellings, late of the city of Bath, Attorney, deceased, and probate whereof was granted to her by our Prerogative Court of Canterbury on the 26th day of February, in the year 1836, to appear personally, or by her proctor duly constituted, in judgment before the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after she shall have been served with these presents, if such day shall be a general session, bye-day, caveat-day, or additional court-day of our said court, otherwise on the general session, bye-day, caveat-day, or additional court-day then next ensuing, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there, by virtue of her corporal oath, to exhibit, bring into, and leave in the registry of our said court, a true, full, plain, perfect, and particular inventory of all and singular the goods, chattels, and credits of the said deceased, which have at any time since his death come to the hands, possession, or knowledge of her, the said Jane Plant, and, by virtue of her like oath, to render a true and just account of her administration of the same, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of James Nicholls, a creditor of the said deceased, against the said Jane Plant; and what you shall do or cause to be done in the premises, you shall duly certify



The citation having been served upon the defendant, and returned into court, an appearance is given on his behalf by the following proxy:—

*Proxy.*

Whereas a citation hath issued, &c. Now know all men, &c., to exhibit this my special proxy, and by virtue thereof, in obedience to the said citation, to exhibit, bring into, and leave in the registry of the said court a true, full, plain, perfect, and particular inventory of all and singular the goods, chattels, and credits of the said deceased which have, at any time since his death, come to my hands, possession, or knowledge, and also to exhibit and render a just and faithful account of my administration thereof upon and by virtue of my corporal oath, and to take such further steps in the premises as shall be necessary on my part and behalf towards procuring me to be dismissed from the said citation and further observance of justice herein, and generally, &c.

Proxy of party cited.

An appearance being thus given, an assignation is made on the proctor of the party cited to bring in the inventory and account on the next court; and if the promoter is a creditor, an affidavit should also then be brought in, in proof of his debt, unless filed before.

The general form of an inventory being so well known, it will not be necessary to give an entire specimen of that instrument, and I will therefore only point the slight difference in the conception which has been adopted by the Ecclesiastical Courts.

The inventory commences thus:—

*Inventory.*

**Inventory.** A true, full, plain, perfect, and particular inventory of all and singular the goods, chattels, and credits of A. B., late of \_\_\_\_\_, deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B., made and exhibited upon and by virtue of the corporal oath of the said C. D., follows, to wit:—

First, this exhibitant saith, &c. (Here follows the usual detail of effects.)

Lastly, this exhibitant saith that no goods, chattels, or credits of or belonging to the personal estate of the said deceased have, at any time since his death, come to the hands, possession, or knowledge of this exhibitant save as is hereinbefore set forth.

(Signed)

C. D.

On the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, the said C. D. was duly sworn to the truth of the above inventory, before me.

E. F.

Present,

H. I., Notary Public.

After an interval of many years, if an inventory is called for, the court will not require an instrument of that precise form to be brought in, but will consider a *declaration* sufficient (c). The latter will equally con-

(c) *Higgins v. Higgins*, Hagg. 4, p. 242. Seventeen years had elapsed in this case.

tain an *entire* statement of the property in question, but will not afford the same precise and particular *minutiæ*.

The heading of the declaration is as follows:—

*Declaration instead of an Inventory.*

A true declaration, instead of a full, plain, perfect, and particular inventory, of all and singular the goods, chattels, and credits of A. B., late of \_\_\_\_\_, deceased, which, at any time since his death, have come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said deceased, made and given in, upon, and by virtue of the corporal oath of the said C. D., follows, to wit:—

Declaration  
instead of  
an inven-  
tory.

First, this declarant declares, &c.

The account rendered in the Ecclesiastical Court is in the following form:—

*Account.*

A true, full, and faithful account of the administration, (with the will annexed,) of the goods, chattels, and credits of A. B., late of \_\_\_\_\_, deceased, which have, since his death, come to the hands, possession, or knowledge of C. D., the residuary legatee and administrator, (with the said will annexed,) of the said goods, chattels, and credits of the said deceased, by authority of this court exhibited and rendered, upon and by virtue of the corporal oath of the said C. D., follows, to wit:—

Account.

**THE CHARGE.**

First, this accountant charges himself with the receipt of the sum of, &c., &c.

**DISCHARGE.**

First, this accountant craves an allowance of the sum of \_\_\_\_\_, so much having been disbursed by him in sundry expenses attending the administration of the deceased's estate, the particulars whereof are set forth in the schedule hereunto annexed, marked A., &c., &c., &c.

C. D.

On the \_\_\_\_\_ day of \_\_\_\_\_ the said C. D. was duly sworn to the truth of the foregoing account, by virtue of the annexed commission, before me,

E. F., Commissioner.

In the presence of

H. I., of \_\_\_\_\_, Householder.

K. L., of \_\_\_\_\_, Householder.

The account having been brought in, the court assigns the proctor of the accountant to exhibit vouchers in proof of the debts set forth by him. Where assets, however, are admitted, and the account is called for by a legatee in a specific amount, the assignation or order is of course dispensed with, and the court will not, in cases where there has been considerable lapse of time before calling for the account, require them to be annexed (d).

The law has fixed no time within which an inventory and account must be sued for, though great delay, in connexion with circumstances, will be considered by

(d) Higgins v. Higgins, Hagg. 4, p. 242.

the court as operating as a bar to that demand, on the presumption that the estate must have been fully administered(e); and accordingly, after a lapse of thirty-four years, the court dismissed an executor with costs who had been so called upon (f).

There is also another instance in which the court will refuse to compel the production of an inventory, viz., if a creditor has brought a suit in Chancery for the discovery of assets; it being against the rule of the Ecclesiastical Court to allow a party to proceed there as well as elsewhere for the same relief(g). The party is bound to make his option in which court he will sue.

The inventory and account having proved unsatisfactory, it is competent to the legatee or creditor, &c., to object to their truth or accuracy, and, for that purpose, he may file an allegation pleading the *omissa* and incorrect statements (h), or he may state them in an act on petition.

In the first case, he may take the answers of the party cited, but he cannot proceed to falsify his oath by the depositions of witnesses; he is only entitled to an inventory or account on oath, and having taken the answers of the other to his allegation, he obtains the further inventory he desired, by putting the answers and original inventory or account together (i).

(e) *Ritchie v. Rees and Rees*, Add. 1, p. 146.

(f) *Bowles v. Harvey*, Hagg. 4, p. 241. *Pitt v. Woodham*, Hagg. 1, p. 247.

(g) *Myddleton v. Rushout*, Phill. 1, p. 247. *Pearson v. Gammon*, Lee 2, p. 268. And by analogy, it would seem, in the

case of a next of kin or legatee suing in both courts. The question is brought before the judge in an act on petition.

(h) *Telfourd v. Morrison*, Add. 2, p. 319.

(i) *Telfourd v. Morrison*, Add. 2, p. 319. *Younge v. Skelton*, Hagg. 3, p. 784.

If the proceeding is by act on petition, affidavits will be filed by each party and if the party cited admits *omissa*, in support of his averment, the court will decree the inventory and account to be corrected.

I will first give a specimen of an exceptive allegation of this nature, the use of which is to get a specific answer to a specific averment (*k*).

*Allegation in objection to an Inventory.*

Allegation in  
objection to  
an inventory.  
First.

That Henry S——, the deceased in this cause, died in the month of March, 1825, and, on or about the 15th day of September, in the same year, letters of administration of all and singular his goods, chattels, and credits were committed and granted, by authority of this court, to Henry S—— and William S——, parties in this cause, as the natural and lawful children of the said deceased, and that the said Henry S—— and William S—— have been assigned by the Right Honourable the Judge of this court to exhibit respectively, by virtue of their corporal oaths, a true, plain, perfect, and particular inventory of all and singular the goods, chattels, and credits of the said deceased which, at any time since his death, have come to their respective hands, possession, or knowledge, and also to render a true and faithful account of their administration thereof; but the party proponent doth expressly allege and propound, that the pretended inventories exhibited in this cause, by the said Henry S—— and William S——, are not, nor either of them, true, plain, perfect, and particular inventories of all and sin-

(*k*) *Barclay v. Marshall*, Phill. 2, p. 189.



gular the said goods, chattels, and credits, inasmuch as the said Henry S—— and William S—— have wilfully omitted to insert therein various sums of money and other effects of which the said deceased died possessed, or to which he was entitled, and which have, or ought to have, come to the hands, possession, or knowledge of the said Henry S—— and William S——, and have not therein sufficiently specified other of such goods, chattels, and credits, as is hereinafter more particularly set forth; and this, &c.

That the said deceased was a solicitor, and there was due and owing to him at the time of his death from the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, the sum of sixty-three pounds, or thereabouts, for law expenses, which sum was, on or about the 4th day of May, 1837, received by \_\_\_\_\_ White, a solicitor, for and on account of the said Henry S—— and William S——, and he, the said \_\_\_\_\_ White, gave a receipt for the same, and therein specified that such sum was so received on account of the administrators of the estate of the said deceased, or to the like effect, and afterwards paid over such sum to the said Henry S—— and William S——, or one of them, notwithstanding which the said Henry S—— and William S—— have not, in the said pretended inventories, charged themselves, or either of them, with the said sum of sixty-three pounds, or with any sum on account thereof, as by law they ought to have done; and this, &c. Second.

That there was also due and owing to the said deceased at the time of his death from the Reverend John A——, of the said parish of \_\_\_\_\_, the sum of nine pounds sixteen shillings, or thereabouts, for Third.

law expenses, which sum was, on or about the 12th day of December, 1826, received by the said William S——, together with other monies on his own account, from the said Reverend John A——; and the said William S——, on behalf of himself and his co-administrator, gave a receipt for the sum of twenty-three pounds four shillings and sixpence, and therein specified that part of such sum was so received on account of the estate of the said deceased, or to the like effect; notwithstanding which, the said Henry S—— and William S—— have not, in the said pretended inventories, charged themselves, or either of them, with the said sum of nine pounds sixteen shillings and fourpence, or any sum on account thereof, as by law they ought to have done; and this, &c.

Fourth.

That there were due and owing to the said deceased, at the time of his death, from various persons, divers sums of money for business done, the amount or particulars of which the party proponent is unable more particularly to set forth, and with respect to which the said Henry S—— hath, in the said pretended inventory by him exhibited, stated that the clerks of the said deceased were, for some time after his death, occupied in making out bills of costs, or to that effect. That some of such sums of money have, since the death of the said deceased, been received by the said Henry S—— and William S——, or one of them, and others thereof still remain due to the estate of the said deceased from responsible persons, and will be eventually recovered, notwithstanding which the said Henry S—— and William S—— have not charged themselves, or either of them, with any sum of money on account thereof, nor made any mention of the same

in the said pretended inventories, or either of them, as by law they ought to have done ; and this, &c.

That the said William S—— hath, in the pretended Fifth. inventory exhibited by him, charged himself with the sum of one hundred and ninety-three pounds seventeen shillings and sixpence as the amount or valuation of part of the household furniture and effects of the said deceased, but hath not specified the particulars of such furniture and effects, or stated that the same have been valued or appraised by a sworn appraiser, as by law he ought to have done ; and this, &c.

That the said Henry S—— hath, in and by the Sixth. said pretended inventory by him exhibited, charged himself with the sum of forty-four pounds eighteen shillings and ninepence as the amount or proceeds of the sale of certain household furniture belonging to the said deceased, but hath not specified the particulars of the same, or whether the said household furniture was sold by public auction, or in what other manner, or whether the same was valued by a sworn appraiser, as by law he ought to have done ; and this, &c.

That all and singular the premises were and are true, Seventh. and so forth.

The answers having been taken to this allegation, and the points in dispute cleared up, the court will *admit* and *approve* the inventory and account, and will dismiss the party cited.

The following forms will illustrate the act on petition of this kind :—

*Act on Petition.*

Act on pe-  
tition.

On the fourth session of Michaelmas Term, to wit, Wednesday, the 6th day of December, in the year of our Lord 1809.

**BOYD *against* CASTELL.**

On which day Clarkson prayed the judge to dismiss Mercy Castell, widow, his party, from this suit, and from all further observance of justice herein, in the presence of Bedford dissenting. Then the said Bedford alleged that this is a cause of bringing in and exhibiting a true, full, plain, perfect, and particular inventory, upon oath, of all and singular the goods, chattels, and credits of John Castell, late of Woolwich, in the county of Kent, victualler, deceased, which at any time since his death have come to the hands, possession, or knowledge of the said Mercy Castell, widow, the relict and sole executrix named in the last will and testament of the said deceased, and also a true and just account of her administration thereof, promoted by Thomas Bird, a creditor of the said deceased, against the said Mercy Castell. And Bedford further alleged, that on the third session of Trinity Term, to wit, the 16th day of June last, the said Clarkson brought in, as he alleged, an inventory and account, on oath, of his party, who was thereupon dismissed, if not objected, on the bye-day of the said Term, when the said Bedford, by way of objection to the dismissal of the said Mercy Castell, alleged that the account of the administration of the effects of the said deceased so exhibited by Clarkson does not set forth the dates of the several payments therein mentioned to have been made, as in justice it ought to

have done, particularly as an action at law had, previously to the institution of this suit, been brought for the recovery of the debt due to his, the said Bedford's, party, against the said executrix, to which she had pleaded *plene administravit*, and thereby was well aware of the importance of the knowledge of the times of such several payments to the interest of his said party, and the necessity of the account, which he has called for by the process of this court, being full in that respect. Wherefore the said Bedford prayed that the Right Honourable the Judge would be pleased to pronounce for the force of such objection, and assign the said executrix to amend the said account by setting forth therein, or otherwise supplying by virtue of her corporal oath, the time or times when the several payments therein mentioned were respectively made; and that otherwise right and justice may be effectually done and administered to him and his said party in the premises.

*Act on Petition.*

Prerogative Court of Canterbury.

Act on petition.

On the third session of Hilary Term, to wit, Wednesday, the 5th day of February, 1845, before the Right Honourable the Judge sitting in judgment in the Common Hall of Doctors' Commons, London, present William Frederic Gostling, one of the Deputy Registrars.

**BURRILL** *against* PADWICK and PADWICK.

Buckton.

Waddilove.

In the goods of Martha Padwick, widow, deceased.

A business of citing William Padwick and Henry Padwick, the } On which day Waddilove, as proctor

natural and lawful and only children of Martha Padwick, late of Heyling Island, in the county of Southampton, widow, deceased, to accept or refuse the letters of administration of all and singular the goods, chattels, and credits of the said deceased, otherwise to shew good and sufficient cause why the same should not be committed and granted to John Hamilton Burrill, the natural and lawful grandson, and one of the persons entitled in distribution to the personal estate and effects of the said deceased, promoted by the said John Hamilton Burrill against the said William Padwick and Henry Padwick.

for the said William Padwick, alleged his party to have been duly sworn administrator of all and singular the goods, chattels, and credits of the said deceased, and he brought in an affidavit of the justification of his said party's sureties and a declaration instead of a true, full, plain, perfect, and particular inventory of the said goods, chattels, and cre-

redits, and prayed letters of administration of the same to pass the seal to his said party, in the presence of Buckton, who objected thereto. Then the said Buckton alleged, that on the fourth session of Michaelmas Term, to wit, Thursday, the 4th day of December, 1844, the Right Honourable the Judge of this court, at the petition of Waddilove, who then appeared and accepted the letters of administration of the effects of the said deceased on behalf of the said William Padwick, decreed the same to pass to his said party, on his exhibiting an inventory, on oath, of all and singular the goods, chattels, and credits of the said deceased, which

at any time either before or since her death had come to his hands, possession, or knowledge, and on his giving justifying security. And Buckton, by way of objection to the said pretended declaration, in lieu of an inventory, brought in by Waddilove on behalf of his said party, further alleged that William Padwick, late of Cosham, in the county of Southampton, Esquire, deceased, (father of Waddilove's said party,) in and by his last will and testament, bearing date the 29th day of May, 1832, and proved in this court in the month of February, 1835, by his widow, Martha Padwick, the party deceased in this cause, and by his son, Waddilove's said party, (the executors therein named,) gave, devised, and bequeathed all his real and personal property to Waddilove's said party in trust, for the use and benefit of his said widow during her life, and after her decease gave, devised, and bequeathed the residue of his real and personal estate to his two sons, the said William Padwick, (Waddilove's party,) and Henry Padwick, and he further alleged, that in the month of May, 1836, the said William Padwick made and entered into an arrangement with the said Martha Padwick, whereby he received from her, the said Martha Padwick, the whole of his reversionary share of the estate of the said testator, and, in consideration of the same, he secured or engaged to pay to her, the said Martha Padwick, during her life the annual sum of one hundred and seventy-two pounds, or thereabouts, or other the income of his said reversionary share of the testator's estate; but he expressly alleged that the said William Padwick, notwithstanding the premises, never paid the said annual sum or other income, or any part thereof, to the said Martha Padwick, or to any person

for her use or on her behalf, and that the arrears of such annuity at the time of the death of the said Martha Padwick amounted to the sum of one thousand seven hundred pounds and upwards, (the same now forming part of her estate,) but which, or any part of which, Waddilove's party hath omitted to set forth and charge himself with in the aforesaid pretended declaration, and Buckton further alleged that the said Henry Padwick, the other residuary legatee substituted in the said will of the said William Padwick deceased, made a similar arrangement with the said Martha Padwick, and, in pursuance thereof, duly and regularly paid to her the annual sum of one hundred and seventy-two pounds during her life, and, in verification of what he so alleged, Buckton craved leave to refer to certain affidavits and proofs to be by him exhibited, and he prayed the Right Honourable the Judge to decree the said William Padwick, (Waddilove's party,) to amend the said pretended declaration by setting forth therein the said sum of one thousand seven hundred pounds and upwards, so due from him to the estate of the said deceased, as by him, Buckton, before alleged, and supplying, by virtue of his corporal oath, the particulars of and concerning the said sum, and that, further or otherwise, right and justice may be effectually done and administered to him and his said party in the premises.

In the presence of Waddilove, denying the allegations of Buckton for the most part to be true, but admitting that the will of William Padwick, late of Cosham, in the county of Southampton, (the father of Waddilove's party,) was proved in this court in the month of February, 1835, by his widow, Martha Pad-



wick, the party deceased in this cause, and his son (Waddilove's party,) the executors named therein. Waddilove also admits that by the said will, he, the said William Padwick, gave and disposed of his real and personal estate upon the trust and in reversion, as alleged by Buckton, but he expressly denies that any arrangement was entered into, as alleged by Buckton, between his, Waddilove's party, and the said Martha Padwick, in order to receive his reversionary share of his father's estate during her life, and Waddilove also denies that, in consideration of such or the like arrangement, his party secured or engaged to pay to the said Martha Padwick, or any person on her behalf, the sum of one hundred and seventy-two pounds, or any other sum of money, annually during her life, as untruly alleged by Buckton. Therefore Waddilove expressly denies that any such sum of money is now due or owing by his party to the estate of the deceased in this cause by reason of such pretended arrangement, and he therefore submits that he is not called upon to set forth or charge himself with anything further, by way of assets of the estate of the deceased, or to amend the declaration already brought in by him, and Waddilove further alleges, that it was not in pursuance of any arrangement similar to that pretended by Buckton, that the said Henry Padwick paid the sum of one hundred and seventy-two pounds annually to the deceased in this cause during her life, but he alleges that that sum was paid to her in consequence of another and totally different arrangement, and which in no way imposed any obligation on his party, and, in verification of what he so alleged, Waddilove craves leave, if necessary, to refer to such

If the proceeding is by act on petition, affidavits will be filed by each party and if the party cited admits *omissa*, in support of his averment, the court will decree the inventory and account to be corrected.

I will first give a specimen of an exceptive allegation of this nature, the use of which is to get a specific answer to a specific averment (*k*).

*Allegation in objection to an Inventory.*

Allegation in  
objection to  
an inventory.  
First.

That Henry S——, the deceased in this cause, died in the month of March, 1825, and, on or about the 15th day of September, in the same year, letters of administration of all and singular his goods, chattels, and credits were committed and granted, by authority of this court, to Henry S—— and William S——, parties in this cause, as the natural and lawful children of the said deceased, and that the said Henry S—— and William S—— have been assigned by the Right Honourable the Judge of this court to exhibit respectively, by virtue of their corporal oaths, a true, plain, perfect, and particular inventory of all and singular the goods, chattels, and credits of the said deceased which, at any time since his death, have come to their respective hands, possession, or knowledge, and also to render a true and faithful account of their administration thereof; but the party proponent doth expressly allege and propound, that the pretended inventories exhibited in this cause, by the said Henry S—— and William S——, are not, nor either of them, true, plain, perfect, and particular inventories of all and sin-

(*k*) *Barclay v. Marshall*, Phill. 2, p. 189.

gular the said goods, chattels, and credits, inasmuch as the said Henry S—— and William S—— have wilfully omitted to insert therein various sums of money and other effects of which the said deceased died possessed, or to which he was entitled, and which have, or ought to have, come to the hands, possession, or knowledge of the said Henry S—— and William S——, and have not therein sufficiently specified other of such goods, chattels, and credits, as is hereinafter more particularly set forth ; and this, &c.

That the said deceased was a solicitor, and there was due and owing to him at the time of his death from the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, the sum of sixty-three pounds, or thereabouts, for law expenses, which sum was, on or about the 4th day of May, 1837, received by \_\_\_\_\_ White, a solicitor, for and on account of the said Henry S—— and William S——, and he, the said \_\_\_\_\_ White, gave a receipt for the same, and therein specified that such sum was so received on account of the administrators of the estate of the said deceased, or to the like effect, and afterwards paid over such sum to the said Henry S—— and William S——, or one of them, notwithstanding which the said Henry S—— and William S—— have not, in the said pretended inventories, charged themselves, or either of them, with the said sum of sixty-three pounds, or with any sum on account thereof, as by law they ought to have done ; and this, &c. Second.

That there was also due and owing to the said deceased at the time of his death from the Reverend John A——, of the said parish of \_\_\_\_\_, the sum of nine pounds sixteen shillings, or thereabouts, for Third.

law expenses, which sum was, on or about the 12th day of December, 1826, received by the said William S——, together with other monies on his own account, from the said Reverend John A——; and the said William S——, on behalf of himself and his co-administrator, gave a receipt for the sum of twenty-three pounds four shillings and sixpence, and therein specified that part of such sum was so received on account of the estate of the said deceased, or to the like effect; notwithstanding which, the said Henry S—— and William S—— have not, in the said pretended inventories, charged themselves, or either of them, with the said sum of nine pounds sixteen shillings and fourpence, or any sum on account thereof, as by law they ought to have done; and this, &c.

Fourth.

That there were due and owing to the said deceased, at the time of his death, from various persons, divers sums of money for business done, the amount or particulars of which the party proponent is unable more particularly to set forth, and with respect to which the said Henry S—— hath, in the said pretended inventory by him exhibited, stated that the clerks of the said deceased were, for some time after his death, occupied in making out bills of costs, or to that effect. That some of such sums of money have, since the death of the said deceased, been received by the said Henry S—— and William S——, or one of them, and others thereof still remain due to the estate of the said deceased from responsible persons, and will be eventually recovered, notwithstanding which the said Henry S—— and William S—— have not charged themselves, or either of them, with any sum of money on account thereof, nor made any mention of the same

in the said pretended inventories, or either of them, as by law they ought to have done ; and this, &c.

That the said William S—— hath, in the pretended Fifth.  
inventory exhibited by him, charged himself with the sum of one hundred and ninety-three pounds seventeen shillings and sixpence as the amount or valuation of part of the household furniture and effects of the said deceased, but hath not specified the particulars of such furniture and effects, or stated that the same have been valued or appraised by a sworn appraiser, as by law he ought to have done ; and this, &c.

That the said Henry S—— hath, in and by the Sixth.  
said pretended inventory by him exhibited, charged himself with the sum of forty-four pounds eighteen shillings and ninepence as the amount or proceeds of the sale of certain household furniture belonging to the said deceased, but hath not specified the particulars of the same, or whether the said household furniture was sold by public auction, or in what other manner, or whether the same was valued by a sworn appraiser, as by law he ought to have done ; and this, &c.

That all and singular the premises were and are true, Seventh.  
and so forth.

The answers having been taken to this allegation, and the points in dispute cleared up, the court will *admit* and *approve* the inventory and account, and will dismiss the party cited.

The following forms will illustrate the act on petition of this kind :—

concerning a certain inventory of all and singular the goods, chattels, and credits of Richard Godfrey, late of Wolverton, in the county of Bucks, deceased, brought into and left in the registry of the said court on the 12th day of April, in the year of our Lord 1780, annexed to a commission which had issued under the seal of the said court, at the suit of Ann Pettit, (wife of Henley Pettit,) the natural and lawful daughter and only child of the said deceased, for inventorizing, valuing, and appraising all and singular the goods, chattels, and credits of the said deceased, in a certain cause or business then depending in the said court, of granting letters of administration of all and singular the goods, chattels, and credits of the said deceased between Lydia Godfrey, widow, the relict of the said deceased, promoting the said cause or business, on the one part, and the aforesaid Ann Pettit, wife of Henley Pettit, the natural and lawful daughter and only child of the said deceased, the party against whom the said cause or business was promoted, on the other part; also touching and concerning a declaration, described to be a declaration instead of a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, as taken, valued, and appraised by virtue of the aforesaid commission, and which, since the said deceased's death, had come to the hands, possession, or knowledge of the said Lydia Godfrey, which said declaration was exhibited in the aforesaid cause on the 8th day of the month of May, 1780, duly sworn to by the said Lydia Godfrey on the 27th day of the preceding month of April; also touching and concerning a further declaration, described as a declaration instead of a further inventory of all and singular the goods, chattels,

and credits of the said deceased, which since his death had in any way come to the hands, possession, or knowledge of the said Lydia Godfrey, widow, the relict and administratrix of the goods of the said deceased, exhibited on the 2nd day of the month of October, 1781, duly sworn to by the said Lydia Godfrey, in a certain cause or business depending in the said court, of exhibiting and leaving in the registry of the said court a further true and perfect inventory and account of all and singular the goods, chattels, and credits of the said deceased, and also of seeing portions allotted and distribution made of the said goods, chattels, and credits of the said deceased, according to the statute in that behalf made and provided, between the aforesaid Ann Pettit, (wife of Henley Pettit,) the natural and lawful daughter and only next of kin of the said deceased, the party promoting the said cause or business of the one part, and the aforesaid Lydia Godfrey, widow, the relict and administratrix of all and singular the goods, chattels, and credits of the said deceased, the party against whom the said cause or business was promoted, of the other part, and also touching and concerning an account described to be a true, just, and faithful account made and rendered by the said Lydia Godfrey, widow, the relict and administratrix of all and singular the goods, chattels, and credits of the said deceased, of and concerning her administration of the goods, chattels, and credits of the said deceased, which at any time since the said deceased's death had come to her hands, possession, or knowledge, exhibited on the 2nd day of October, 1781, duly sworn to by the said Lydia Godfrey, the aforesaid inventory, declarations, and account respectively remaining in the registry of the said court. Whereas

it appears from the proceedings in the above-mentioned suits that the said Richard Godfrey, the party deceased, (having whilst living, and at the time of his death, goods, chattels, or credits in divers dioceses or peculiar jurisdictions, sufficient to found the jurisdiction of the said Prerogative Court of Canterbury,) died intestate, leaving behind him the aforesaid Lydia Godfrey, his lawful widow and relict, and the aforesaid Ann Pettit, (wife of Henley Pettit,) his natural and lawful daughter and only child, and with the said Lydia Godfrey the only persons entitled in distribution of the goods, chattels, and credits of the said deceased. And whereas, on or about the 26th day of the month of April, in the said year of our Lord 1780, letters of administration of all and singular the goods, chattels, and credits of the said deceased were granted by the authority of the said Prerogative Court to the aforesaid Lydia Godfrey, widow, the relict of the said deceased. And whereas divers proceedings have been had in the said court and special proxies have been exhibited under the respective hands and seals of the said Lydia Godfrey and the said Ann Pettit, wife of Henley Pettit, (the proxy executed by the said Ann Pettit being duly witnessed by the said Henley Pettit,) and the proctors of the said Lydia Godfrey and the said Ann Pettit have respectively admitted the interest of each other's aforesaid party; and whereas in the said cause or business depending in the said court, of exhibiting and leaving in the registry of the said court a further true and perfect inventory and account of all and singular the goods, chattels, and credits of the said deceased, and also of seeing portions allotted and a distribution made of the said goods, chattels, and credits, according to the



statute in that behalf made and provided, promoted by the aforesaid Ann Pettit, (wife of Henley Pettit,) the natural and lawful daughter and only next of kin of the said deceased, against the aforesaid Lydia Godfrey, widow, the relict of the said deceased, sundry vouchers, marked from No. 1 to No. 58 inclusively, have been exhibited in support and verification of the aforesaid account by the proctor of the aforesaid Lydia Godfrey, and the usual allegation by him given in acts of court, and the proctor of the said Ann Pettit, (wife of the said Henley Pettit,) hath since given in the personal answers, on oath, of his said party thereto; and whereas the said cause or business hath since been assigned for sentence on the first and second assignations and informations, and on the 10th day of July last was heard before the Right Worshipful Peter Calvert, Doctor of Laws, Master, Keeper, or Commissary of the said Prerogative Court of Canterbury, the judge aforesaid, who, by his interlocutory decree, having the force and effect of a definitive sentence in writing, allowed the aforesaid inventory, declaration, (instead of an inventory,) and account, and referred the same to the deputy registrars of the said court, or one of them, to make his or their report thereon. Now know all men by these presents, that I, the said George Gostling, one of the Deputy Registrars of the said Prerogative Court of Canterbury, do hereby, with all submission, report that I have carefully and diligently considered the said inventory, declarations, and account so brought into and exhibited, and remaining as aforesaid in the registry of the said Prerogative Court of Canterbury, and find the total of the said inventory, taken by virtue of the aforesaid commission of appraisement, to amount to the sum of

one thousand three hundred and sixty-five pounds thirteen shillings and a halfpenny, from which said sum of one thousand three hundred and sixty-five pounds thirteen shillings and a halfpenny it appears, by the aforesaid declaration of the said Lydia Godfrey, exhibited on the aforesaid 8th day of May, 1780, that the sum of one hundred and thirty-three pounds eight shillings and sixpence is to be deducted on account of sundry articles which, since the said deceased's death, had been purchased by, and solely belonged to, the said Lydia Godfrey, having been improperly inserted in the said inventory, and which said sum of one hundred and thirty-three pounds eight shillings and sixpence, being deducted from the aforesaid sum of one thousand three hundred and sixty-five pounds thirteen shillings and a halfpenny, reduces the amount of the said inventory to the sum of one thousand two hundred and thirty-two pounds four shillings and sixpence halfpenny, and which said sum of one thousand two hundred and thirty-two pounds four shillings and sixpence halfpenny, I humbly report, appears to me to be the true amount of the charge; and I further humbly report, that I find the several articles of the aforesaid account or discharge amount to the sum of seven hundred and seventy-four pounds eighteen shillings and sevenpence three farthings, which said sum of seven hundred and seventy-four pounds eighteen shillings and sevenpence three farthings, being deducted from the said sum of one thousand two hundred and thirty-two pounds four shillings and sixpence halfpenny, being the amount as aforesaid of the charge, leaves the sum of four hundred and fifty-seven pounds five shillings and tenpence three farthings, and which said sum of four hundred

and fifty-seven pounds five shillings and tenpence three farthings I most humbly report to be the sum to be distributed and divided after payment of the legal expenses; one third thereof to the aforesaid Lydia Godfrey, as the widow and relict of the said deceased, and the other two thirds thereof to the said Ann Pettit, (wife of Henley Pettit,) as the natural and lawful daughter and only child of the said deceased, and, with the said Lydia Godfrey, the only persons entitled in distribution of the goods, chattels, and credits of the aforesaid Richard Godfrey, the party deceased; all which I do most humbly report, as witness my hand, this 12th day of May, in the year of our Lord 1784.

(Signed)

GEO. GOSTLING.

### *Registrar's Report.*

In the Prerogative Court of Canterbury.

Registrar's  
report.

A report made by William Frederick Gostling, one of the Deputy Registrars of the said Prerogative Court, to the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of the said Court, lawfully constituted, his surrogate, or some other competent judge in this behalf, touching and concerning a certain declaration instead of an inventory, described to be a declaration instead of a true, full, and perfect inventory of all and singular the goods, chattels, and credits of John Wilson, late of Kingsgate Street, in the parish of Saint George the Martyr, in the county of Middlesex, boot and shoe maker, deceased, exhibited on the second session of Trinity Term, to wit, Thursday, the 6th day of June, 1839, and duly sworn to by John Wilson, one of the

natural and lawful children of the said deceased, and administrator of the said deceased's estate, and also a further declaration exhibited on the caveat-day after Trinity Term, to wit, Tuesday, the 8th day of October, 1839, and duly sworn to by the said John Wilson, in a certain cause or business depending in the said court, of exhibiting and leaving in the registry of the said court a true, full, plain, and particular inventory of all and singular the goods, chattels, and credits of the said deceased which have come to the hands, possession, or knowledge of the said John Wilson, and also of rendering a just and lawful account of the administration thereof, by virtue of his corporal oath, and of seeing and hearing a portion or portions allotted and distribution of the goods, chattels, and credits of the said deceased made, according to the act or acts of Parliament in that case made and provided, between Thomas John Wilson, one of the natural and lawful sons of the said deceased, and one of the next of kin, the party promoting the said cause or business, on the one part, and the aforesaid John Wilson, the party against whom the said cause or business was promoted, on the other part; and also touching and concerning an account made and rendered by the said John Wilson, the administrator aforesaid, of and concerning the administration of the goods, chattels, and credits of the said deceased which had, at any time since the said deceased's death, come to his hands, possession, or knowledge, exhibited on the said second session of Trinity Term, to wit, Thursday, the 6th day of June, 1839, duly sworn to by the said John Wilson, the aforesaid declaration, instead of an inventory and account, respectively remaining in the registry of the

said court. Whereas it appears from the proceedings in the said cause or business that the said John Wilson, the party deceased, (having, whilst living, and at the time of his death, goods, chattels, and credits in divers dioceses or peculiar jurisdictions, sufficient to found the jurisdiction of the said Prerogative Court of Canterbury,) died intestate, leaving behind him Elizabeth Wilson, his lawful widow and relict, and the said Thomas John Wilson, the said John Wilson, and Susannah Wilson, spinster, since deceased, his natural and lawful and only children, and only next of kin, and, together, the only persons entitled in distribution to his personal estate and effects; and whereas the said Elizabeth Wilson duly renounced the letters of administration of all and singular the goods, chattels, and credits of the said deceased; and whereas on the 16th day of September, 1835, letters of administration of all and singular the goods, chattels, and credits of the said deceased were committed and granted, by the authority of the said Prerogative Court, to the said John Wilson, the natural and lawful son, and one of the next of kin, of the said deceased; and whereas divers proceedings have been had in the said cause, and on the third session of Michaelmas Term, to wit, Monday, the 25th day of November, 1839, the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, the judge aforesaid, allowed the aforesaid declaration instead of an inventory and further inventory and account exhibited in this cause, the same having been first examined, and not having been objected to, and referred the said declaration, further inventory, and also the account, to the deputy registrars, or one of them, to report the amount of the rest and residue

of the goods, chattels, and credits of John Wilson, the deceased in this cause, remaining on the account of John Wilson, to whom administration of the goods, chattels, and credits of the said deceased was granted as aforesaid, and to what person or persons respectively the said residue is to be limited, and in what portions allotted. Now know all men by these presents, that I, the said William Frederick Gostling, one of the Deputy Registrars of the said Prerogative Court, do hereby, with all submission, report that I have carefully and diligently considered the said declaration instead of an inventory, and the said further inventory, and also the said account, so brought into and exhibited and remaining in the registry of the said Prerogative Court of Canterbury, and find the total of the said declaration instead of an inventory to amount to the sum of two hundred and thirty-five pounds ten shillings, and the total of the said further inventory to amount to the sum of four pounds, and, (the said sums of two hundred and thirty-five pounds ten shillings and four pounds making, together, the sum of two hundred and thirty-nine pounds ten shillings,) which sum, I humbly report, appears to me to be the true amount of the charge; and I further humbly report, that I find the several articles of the aforesaid account or discharge amount to the sum of sixty-four pounds and ninepence, which said sum of sixty-four pounds and ninepence, being deducted from the said sum of two hundred and thirty-nine pounds ten shillings, being the amount of the aforesaid charge, leaves the sum of one hundred and seventy-five pounds nine shillings and threepence, which I humbly report to be the sum now remaining to be distributed and divided in manner following, to

wit :—the sum of fifty-eight pounds nine shillings and ninepence to Elizabeth Wilson, widow, the relict of the said John Wilson, deceased; the sum of thirty-eight pounds nineteen shillings and tenpence to Thomas John Wilson, one of the natural and lawful children of the said deceased; the sum of thirty-eight pounds nineteen shillings and tenpence to John Wilson, the administrator aforesaid, also one of the natural and lawful children of the said deceased; the sum of thirty-eight pounds nineteen shillings and tenpence to the personal representatives of Susannah Wilson, also one of the natural and lawful children of the said deceased, who survived the said John Wilson, her father, but who is also since dead, a spinster, and intestate; all which I do humbly report; as witness my hand, this 31st day of January, 1840.

W. F. GOSTLING,

One of the Deputy Registrars.

On the ensuing court, no objection being made by the opposite party, or an objection on that side having been overruled, the judge, on motion of counsel, confirms the report, and decrees distribution of the amount of the report to be made, and directs the deputy registrars, or one of them, to prepare an order of distribution accordingly.

The order of distribution is in the following form :—

### *Order of Distribution.*

An order or decree made and interposed the 23d day of June, in the year of our Lord 1790, by the Right Honourable Sir William Wynne, Knight, Doctor of

Order of distribution.

Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, lawfully constituted, touching and concerning the personal estate of Thomas Bolt, late of the parish of Saint Luke, in the county of Middlesex, deceased, follows, to wit:—

Whereas the said Thomas Bolt departed this life some time since, intestate, leaving behind him Elizabeth Bolt, widow, his lawful relict, and Mary Gill, spinster, a minor, his niece, the only persons entitled in distribution to his personal estate; and whereas, since the death of the said deceased, to wit, in or about the month of March, in the year of our Lord 1786, letters of administration of all and singular the goods, chattels, and credits of the said deceased were, by the authority of the said Prerogative Court of Canterbury, committed and granted to the said Elizabeth Bolt, widow; and whereas a cause or suit hath lately been commenced and is now depending in the said Prerogative Court of Canterbury, between the aforesaid Mary Gill, spinster, a minor, acting by Hannah Gill, spinster, her curatrix or guardian lawfully assigned, the party promoting the said cause or business, on the one part, and the aforesaid Elizabeth Bolt, widow, the party against whom the said cause or business is promoted, on the other part, touching and concerning the exhibiting an inventory and rendering an account of the personal estate of the said deceased, and making a distribution thereof according to law; and whereas the said Elizabeth Bolt, widow, on or about the first session of Michaelmas Term, in the year 1787, in the said cause or suit, by her proctor exhibited and left in the registry of the said Prerogative Court, upon her oath, an inventory of the goods, chattels, and credits of the said Thomas Bolt, which since



his death had to that time come to her hands, possession, or knowledge, and also an account, upon her said oath, of her administration of the goods, chattels, and credits of the said deceased, and an allegation, in acts of court, hath been given in and admitted in the said cause on the part of the said administratrix; and whereas the contents of the said inventory and account have been confessed in the said cause to be true by the proctor of the said Mary Gill, spinster; and whereas it appears by the said inventory and account that, deducting what was to be deducted, and allowing what was to be allowed, there remained in the hands of the aforesaid Elizabeth Bolt, widow, the administratrix, the sum of three hundred and ninety pounds fourteen shillings and fivepence halfpenny, a present clear estate, capable of being distributed pursuant to the Act of Parliament entitled "An Act for the better settling Intestates' Estates," deduction being thereout first to be made of the respective proctors' bills for the parties before the court, so far as relates to the said cause; and whereas the reasonable bills of the said proctors in the said cause amount to the sum of forty-one pounds ten shillings and sixpence, which being deducted from the aforesaid sum of three hundred and ninety pounds fourteen shillings and fivepence halfpenny, there remains the sum of three hundred and forty-nine pounds eleven shillings and elevenpence halfpenny, a present clear estate, capable of being distributed according to the said act of Parliament. Whereupon the judge aforesaid, having well weighed and considered the premises, and the said act of Parliament, at the petition of the proctor of the said Mary Gill, spinster, ordered, decreed, and allotted the said sum of three hundred and forty-nine pounds eleven shillings and elevenpence

halfpenny to be distributed in manner following, that is to say :—

First, the said judge ordered and allotted unto the aforesaid Elizabeth Bolt, widow, the relict and administratrix of the goods, chattels, and credits of the said deceased, the sum of one hundred and seventy-four pounds fifteen shillings and elevenpence three farthings for and in full of her distributable part or share of the said sum of three hundred and forty-nine pounds eleven shillings and elevenpence halfpenny.

Item, the said judge ordered and allotted unto the said Mary Gill, spinster, a minor, niece of the said deceased, the sum of one hundred and seventy-four pounds fifteen shillings and elevenpence three farthings for and in full of her distributable part or share of the said sum of three hundred and forty-nine pounds eleven shillings and elevenpence halfpenny.

And lastly the said judge ordered and directed that the said Hannah Gill shall, at or before the receipt of the share of the said Mary Gill, spinster, a minor, of the personal estate of Thomas Bolt, deceased, so allotted as aforesaid, give bond in the said court, with sufficient sureties that if after payment of the said share, any debt or debts truly owing by the said Thomas Bolt shall appear and be sued for and recovered of the aforesaid Elizabeth Bolt, widow, the administratrix aforesaid, that then the said Mary Gill, spinster, her executors, and administrators or assigns, out of the said sums so received or to be received, as aforesaid, shall and will refund and pay back to the said Elizabeth Bolt, widow, her executors, administrators, or assigns a rateable or proportionable part or share of such debt or debts, and of the cost of the suit and charges of the said Elizabeth Bolt, that may happen by reason of such debt or debts, or

any suit or suits that may be commenced for the same, thereby to enable her the said Elizabeth Bolt, her executors, or administrators, to pay and satisfy such debt or debts and costs of suit so to be recovered or paid after distribution made as aforesaid, and also shall indemnify the said Elizabeth Bolt, the administratrix aforesaid, the said judge, his surrogate, the principal and deputy registrars, and all others, the officers and ministers of the said court, their respective executors and administrators, from and against all other persons having or pretending to have any right, title, or interest, share, claim, or demand into or out of the personal estate of the said Thomas Bolt, deceased, or any part thereof for or on account of the said respective shares or sums to be paid to them respectively.

(Signed) Wm. WYNNE.

The order being prepared, the registrar will in open court allege that it has been made out.

Security to refund, in case of latent debts, is given by the promoter, and a decree, (enforced by a monition,) is then made upon the administrator to pay the distributive share or shares.

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## SUIT TO PERMIT A BOND TO BE SUED UPON.

THE process for obtaining permission from the Ecclesiastical Judge to sue upon an administration bond, which has been taken in his court, next requires consi-

deration. I have thus placed it in immediate succession to the suits for inventory, account, and distribution, inasmuch as the latter are in most cases the necessary precursors to such an application.

The species of bond alluded to is required as well in the case of a mere intestacy, (*nullo condito testamento*,) as where administration is about to be granted with a will annexed, on there being no executor therein appointed or such executor having died or renounced his right of probate.

This incident of the ordinary's power of granting administration has already been shewn to be of very great antiquity, the object of the obligation being not merely to indemnify the former, but also to afford a general protection to the interests of all persons having a claim upon the estate under administration from the waste and malpractices of an unfaithful or dishonest administrator.

In cases of pure intestacy, the Ecclesiastical Court is governed by the provisions of the Statute of Distribution, (22 and 23 Car. 2, c, 10,) which has the following enactments on the subject, viz., the administrator shall enter into bond with two or more sureties conditioned for the making, or causing to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the deceased which have or shall come to the hands, possession, or knowledge of the administrator, or into the hands or possession of any other person or persons for him; and for exhibiting the same into the registry of the spiritual court, at or before the end of six months; and for well and truly administering, according to law, such goods and chattels; and further, for the making a true and just account of his

administration, at or before the end of twelve months; and for delivering and paying all the rest and residue of the goods, chattels, and credits which shall be found remaining on his accounts, (the same being first examined and allowed of by the judge of the court,) unto such person or persons respectively as the judge, by his decree or sentence, pursuant to the Statute of Distribution, shall limit and appoint; and if it shall thereafter appear that any will was made by the deceased, and the executor therein named exhibit the same into the court, (making request to have it allowed and approved accordingly,) and for his, the administrator's, rendering and delivering on being thereunto required, (approbation of such testament being first had and made,) the letters of administration in the court.

But I shall afford the reader a clearer view of the liability of the surety, on the breach of his principal, by giving a specimen of the bond itself.

The form of an administration bond, (without the annexation of a will,) is as follows:—

***Bond.***

Know all men by these presents that we, A. B., of  
, &c., C. D., of , &c., and  
E. F., of &c., are become bound unto the  
most Reverend Father in God, by Divine  
Providence Lord Archbishop of Canterbury, Primate  
of all England, and Metropolitan, in the sum of  
pounds, of good and lawful money  
of Great Britain, to be paid to the said Most Reverend  
Father in God, or his certain attorney, executors,  
administrators, or assigns; for which payment, well and

truly to be made, we bind ourselves and every of us for the whole, our heirs, executors, and administrators by these presents. Sealed with our seals.

Dated the                      day of                      , in the year of our Lord 18   .

The condition of this obligation is such, that if the above bounden A. B., the natural and lawful father of H. I., late of                      , in the county of                      , bachelor, deceased, and administrator of all and singular the goods, chattels, and credits of the said deceased, which have or shall come to the hands, possession, or knowledge of him, the said A. B., or into the hands or possession of any other person or persons for him, and the same so made do exhibit or cause to be exhibited in the registry of the Prerogative Court of Canterbury, at or before the last day of                      next ensuing; and the same goods, chattels, and credits and all other goods, chattels, and credits of the said deceased, at the time of his death, which at any time after shall come to the hands or possession of the said A. B., or into the hands or possession of any other person or persons for him, do well and truly administer, according to law, and further do make, or cause to be made, a true and just account of his said administration at or before the last day of                      , which shall be in the year of our Lord 18   ; and all the rest and residue of the said goods, chattels, and credits which shall be found remaining upon the said administrator's accounts, (the same being first examined and allowed of by the judge or judges for the time being of the said court,) shall deliver and pay unto such person or persons respectively, as the said judge or judges, by his or their decree or sentence, (pursuant to the true intent and meaning of an act of Parliament,

intituled "An Act for the better Settling of Intestate Estates,") shall limit and appoint. And if it shall hereafter appear that any last will and testament was made by the said deceased, and the executors therein named do exhibit the same in the said court, making request to have it allowed and approved accordingly, if the said A. B., being thereunto required, do render and deliver the said letters of administration, (approbation of the said testament being first had and made,) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Sealed and delivered in the presence of

I. K.

On this bond, the following breaches of the principal may be assigned; viz., the non-delivery of the inventory and account within the time limited in the condition, the mal-administration of the effects, by not collecting the estate and paying all just demands and expenses thereout, and the failure to pay over the clear balance or residue to the parties entitled thereto, in obedience to a decree of distribution made by the judge, or to deliver up the letters of administration, after the appearance of a will (*b*).

The parties for whose protection this caution was provided are next of kin and creditors; for the latter has a right to sue upon this kind of administration bond

(*b*) *Younge v. Skelton*, Hagg. 3, p. 783.

**This bond is in the following form, viz.:—**

***Bond.***

Know all men by these presents, that we, A. B., of  
, C. D., of , and E. F.,  
of , are become bound unto the Most  
Reverend Father in God, William, by Divine Providence  
Lord Archbishop of Canterbury, Primate of all Eng-  
land, and Metropolitan, in the sum of pounds,

(c) **Archbishop of Canterbury v. Wills**, 1 Salk. 315, 172. Ditto v. Howse, Cowp. 140. Ditto v. Robertson, 3 Tyrwh. 390, and Crompton and Meeson, 1, p. 708. **Greenside v. Benson**, 3 Atk. 248. **Thomas v. Archbishop of Canterbury**, 1 Cox Equ. Ca. 399. **Hackman v. Black**, Lee R. 2, p. 251.

(d) **Clerke's Praxis**. De cau. test. tit. ccix. s. 4.



of good and lawful money of Great Britain, to be paid to the said Most Reverend Father in God, or his certain attorney, executors, administrators, or assigns; for which payment, well and truly to be made, we bind ourselves, and every of us, for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals.

Dated the       day of       , in the year of our Lord       .

The condition of this obligation is such, that if the above bounden A. B., the residuary legatee named in the will of I. K., late of       , deceased, and administrator, with the said will annexed, of all and singular the goods, chattels, and credits of the said deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased which have or shall come to his hands, possession, or knowledge, and the same so made do exhibit, or cause to be exhibited, into the registry of the Prerogative Court of Canterbury at or before the last day of       next       ensuing; and the same goods, chattels, and credits do well and truly administer, (that is to say,) do pay the debts of the said deceased which he did owe at his decease, and then the legacies contained in the said will annexed to the said letters of administration so to him committed, as far as his goods, chattels, and credits will thereto extend and the law charge him; and further do make, or cause to be made, a true and just account of his said administration when he shall be thereunto lawfully required. And all the rest and residue of the said goods, chattels, and credits which shall be found remaining upon his said account, (and not otherwise disposed of in the said will,) the same being first examined and allowed of by

the judge of the said court for the time being, shall distribute and dispose in such a manner and form as shall be limited by the discretion of the said judge; and lastly, do at all times hereafter clearly acquit, discharge, and save harmless the within named Lord Archbishop of Canterbury, the said judge, and all other officers of the said court, against all persons having, or pretending to have, any right, title, or interest unto the goods, chattels, and credits of the said deceased, then this obligation to be void and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)

C. D. (L.S.)

E. F. (L.S.)

Sealed and delivered in the presence of me, I. K.

It will have been observed that there is a time assigned for the exhibition of an inventory only in this bond. In respect of the breaches of the condition, it comprehends all the former ones, with the addition of the further requisite of paying the deceased's debts and the legacies contained in his will (e).

In these bonds two sureties are required to be joined with the principal, except in those instances where the property to be administered is under the value of twenty pounds, or where the administration under any amount is committed to the husband, in both which cases one surety only is joined with the principal.

The bond is the property of the ordinary, and remains in his custody; and though unable of himself to enforce a performance of its condition, in the event of a

(e) *Folkes v. Doeminiue*, 2 Strange, 1137.

malfeasance, yet, on the application of an unsatisfied creditor (*f*), or of a next of kin, or legatee, who can shew that sufficient effects to answer their claims have travelled into the hands of the administrator, the ordinary will assign or permit the bond to be delivered out of the registry, in order that an action at law in his own name may be instituted thereon, for the purpose of compelling the sureties to fulfil its condition.

The power of the court in these matters is perfectly free and discretionary (*g*). And, accordingly, it first requires, for its own satisfaction, as strict proof of the alleged forfeiture as will be necessary on the subsequent action at law (*h*). And according as the court sees that there has been such breach, or not, it will, in the exercise of its unlimited discretion, reject or allow the application against the sureties.

Where the only breach alleged is the non-delivery of the inventory or account within the time assigned by the bond (*i*), the court will not, without entering at all on the merits of the case, direct the bond to be attended with. There are many instances in which the court has rejected applications under these circumstances; for the court expects to be satisfied that there has been actual mal-administration on the part of the principal.

The present practice now is, as a preliminary step towards demonstrating the liability of the sureties, to cite the administrator to exhibit an inventory and account; and this is done in all cases without distinction, whether the suit be at the instance of a creditor, or next

(*f*) *Crowley and Sharman v. Chipp and Tubb*, Curt. 1, p. 459. (*h*) *Devey v. Edwards and Tappen*, Add. R. 3, p. 74.

(*g*) Ditto p. 460.

(*i*) *Crowley and Sharman v. Chipp and Tubb*, Curt. 1, pp. 458, 460, 461.

of kin, or a pecuniary or residuary legatee; for one essential object of the bond is to shew an account of payments and receipts (*k*). And the production of these documents shews the existence or non-existence of assets for a complete or proportional discharge of the debts and legacies due from the deceased's estate, and also affords a constat of what residue is to be distributed.

Where a creditor or a legatee applies, the exhibition of an inventory and account is necessarily sufficient for the purpose of either. If assets are shewn, the legatee must then obtain a decree for the payment of his legacy against the administrator, with the will annexed, unless he is a bankrupt or avowedly insolvent, or against his representative, if dead, either in the Court of Chancery or Arches, and the creditor must bring his action at law. And if, after judgment or decree, the administrator fails to discharge the debt or legacy, the complaining party is entitled to apply to the Ecclesiastical Court for a remedy against the sureties. The decree for a legacy is only requisite so far as it shews that all necessary proceedings have been taken against the principal to compel payment, before having recourse to the sureties who were joined with him; and accordingly, in a case (*l*) where other circumstances shewed that all endeavours had been made for that purpose, but no decree had actually been obtained, the court dispensed therewith,

(*k*) *Murray and Maling v. M'Inerheny and Impey*, Curt. 1, p. 579. In this case, which was peculiar, the administrator, (an attorney,) had not been called upon during his life to render an account, and the party entitled, (his principal,) had given him three years to pay the amount in.

The sureties were dismissed, on the ground of the other party having acquiesced in the non-payment.

(*l*) *Rudge*, by his attorney, against *Partridge and Newman*, Michaelmas Term, December 6, 1841, Prerogative Court of Canterbury.

and distinguished it from the case of a residuary bequest, which being uncertain in its amount, must be judicially ascertained. If a next of kin or residuary legatee has been defrauded by an administrator, or administrator with a will annexed, he must cite the latter not only to exhibit an inventory and render an account of his administration, but must also call on him to see distribution made. And if it is shewn that the administrator has become bankrupt, or, after the decree of distribution and allotment of residue is made, he is in contempt and cannot pay, the court will then, as in the other cases, permit the bond to be delivered out (*m*).

But before taking this step, the court always cites the sureties to shew cause against such a proceeding, in order that they may have a fair opportunity of exonerating themselves from the imputed liability, if such a thing can be done.

This process is in the form of a decree with intimation, and is specially moved for, in open court, on an affidavit detailing the circumstances of the case, which are embodied in the decree.

### *Decree*

William, by Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting :

Whereas the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commis-

Decree  
against  
sureties at  
the instance  
of creditors.

(*m*) *Younge v. Skelton*, Hagg. 3, p. 780.

sary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding, hath, at the petition of the proctor of S. A. and J. C., alleging that William H——, late of ———, deceased, died on the 5th day of July, 1832, having, whilst living, made and duly executed his last will and testament in writing, and did not thereof appoint any executor, but therein appointed his son William H—— and others universal legatees in trust; and further alleging, that the said deceased was, at the time of his death, justly and truly indebted to his said parties, the said S. A. and J. C., on specialty security, in the sum of three thousand seven hundred pounds and upwards, of lawful money of Great Britain, and which debt was, after his death, increased by the further sum of one thousand pounds, of the like lawful money, being the amount of two special promissory notes of five hundred pounds each, which his said parties, the said S. A. and J. C., had, in the lifetime of the said deceased, endorsed as sureties for him, and which, after his death, they were obliged to pay, and did pay, and the amount of which said notes was received by the said deceased, on his said parties so becoming sureties, whereby the said debt was so increased to the sum of four thousand seven hundred pounds and upwards, exclusive of interest; and further alleging, that letters of administration, with the said will annexed, of all and singular the goods, chattels, and credits of the said deceased were, on the 16th day of August, 1832, committed and granted, under seal of the said court, to the said William H——, who had previously, together with Joseph H—— and John H——, his sureties, executed a certain bond, bearing date the 28th day of July, in the said

year 1832, whereby they, and each of them, became bound to the Most Reverend Father in God, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, in the sum of twelve thousand pounds, of good and lawful money of Great Britain, with a condition thereunder written, that if the said William H———, the son, did make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased which had or should come to his hands, possession, or knowledge, and the same so made should exhibit, or cause to be exhibited, into the registry of the Prerogative Court of Canterbury at or before the last day of January then next ensuing, and the same goods, chattels, and credits of the said William H——— should well and truly administer; that is to say, should pay the debts of the said deceased, and then the legacies contained in the said will annexed to the said letters of administration so to him committed, as far as his goods, chattels, and credits would thereto extend, and the law would charge him; and further, should make, or cause to be made, a true and just account of his said administration, when he should be thereto lawfully required, and all the rest and residue of the said goods, chattels, and credits which should be found remaining upon his said account, and not otherwise disposed of in the said will, the same being first examined, and allowed, by the judge of the said court for the time being, should distribute and dispose of in such manner and form as should be limited by the discretion of the said judge, and should at all times thereafter clearly acquit, discharge, and save harmless the said Lord Archbishop of Canterbury, the said judge, and all other officers of the

said court, against all persons having, or pretending to have, any right, title, or interest in the goods, chattels, and credits of the said deceased, then the said obligation should be void, or else should remain in full force and virtue; and further alleging, that the nature and large amount of the specialty debt so due and owing from the said deceased, at the time of his death, to the said Samuel A—— and John C——, were well known, as well to the said William H——, the son, as to the said Joseph H——, one of his said sureties, before the said letters of administration, with the said will annexed, so passed the seal of this court; and further alleging, that the said William H——, the son, died on the 11th of September, 1834, without having exhibited into the registry of this court either an inventory of the effects of the said deceased or an account of his administration thereof, and that he, the said William H——, the son, did not well and truly administer the goods, chattels, and credits of the said deceased which did come to his hands and possession; nor did he pay the debts which he, the said deceased, did owe at the time of his decease, according to law; but, on the contrary, did, after the said letters of administration, with the said will annexed, were so granted to him, as aforesaid, waste and misapply the said goods, chattels, and credits, and especially inasmuch as he did, amongst other things, notwithstanding his knowledge of the said specialty debt so due and owing to his parties, the said Samuel A—— and John C——, and that a large sum was due and owing thereon, pay thereout sundry simple contract debts due and owing, or pretended to be due and owing, from the said deceased at the time of his death, and in particular did



so misapply the sum of three hundred and twenty-one pounds nine shillings and ninepence, or thereabouts, in payment of a simple contract debt due and owing, or pretended to be due and owing, from the said deceased to the said Joseph H——, one of his, the said William H——, the son's, sureties. That there is not at this time any general personal representative, either of the said William H——, the father, or the said William H——, the son; and further alleging, that his said parties had, on or about the 9th day of October, 1834, caused a notice to be served on the said Joseph H—— and John H——, referring them, amongst other things, to the contents of the aforesaid administration-bond, and stating that the said bond had become forfeited for the reasons aforesaid, and that the effects of the said deceased were at that time in the illegal possession of parties who had not administered thereto, and that his said parties held the said Joseph H—— and John H—— responsible and accountable as well for the effects of the said deceased, in the hands of the said William H——, the son, at the time of his death, as for the waste thereof at that time taking place, or which should thereafter take place, and for loss, costs, damages, and expenses which they, the said Samuel A—— and John C——, might sustain or be put to by reason of the default of the said Joseph H—— and John H——, or to that effect; and further alleging, that they, the said Joseph H—— and John H——, had taken no step to redress the grievances complained of in the said notice, but that the effects of the said deceased had continued to be applied in a course of devastation and illegal appropriation, (as in and by an affidavit duly made and sworn

to by the said Samuel A——, one of his parties, exhibited and shewn to our master, keeper, or commissary aforesaid, now remaining in the registry of our said court, reference being thereunto had, will appear,) decreed the said Joseph H—— and John H—— to be cited to appear in judgment on the day, at the time and place, and to the effect hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Joseph H—— and John H—— to appear personally, or by their proctors or proctor, duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after service of these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said Prerogative Court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten o'clock in the forenoon of the same day, and there to abide, if occasion require, during the sitting of the court, then and there to shew good and sufficient cause if they, or either of them, have or know any, why the bond or obligation given and entered into by them, together with the aforesaid William H——, the son, now deceased, for his faithful administration of the goods, chattels, and credits of the said deceased, should not be permitted to be sued for at common law, and on the

same being so sued for, the bond or obligation be attended with and produced, as may be requisite and necessary for the furtherance of justice, and further to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Samuel A—— and John C——; and further that you intimate, or cause to be intimated, to the said Joseph H—— and John H——, to whom we do also intimate, by the tenor of these presents, that if they do not appear on the day, at the time and place, and to the effect aforesaid, or appearing, do not shew good and sufficient cause, concludent in law, to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed, and will proceed, to permit the said bond or obligation, given and entered into by them, together with the said William H——, the son, as aforesaid, to be sued for at common law, and, on the same being so sued for, will direct the said bond or obligation to be attended with and produced, as may be requisite and necessary for the furtherance of justice, the absence, or rather contumacy, of the said Joseph H—— and John H——, so cited and intimated in anywise notwithstanding; and what you shall do, or cause to be done, in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, the            day of            , in the  
year of our Lord            , and in the            year of our  
translation.

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*Decree.*

Decree  
against  
sureties at  
the instance  
of the assign-  
nee of the  
intestate's  
child, (a  
bankrupt.)

William, by Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting :

Whereas the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding in a certain cause or business of bringing into and leaving in the registry of our said court a true, full, plain, perfect, and particular inventory of all and singular the goods, chattels, and credits of William Nettleton, late of Berwick Street, Soho, in the parish of Saint James, Westminster, in the county of Middlesex, deceased, which have come to the hands, possession, or knowledge of Thomas Price, as the curator or guardian heretofore assigned to William Nettleton, a minor, the natural and lawful son and only child of the said deceased, and administrator, (for the use and benefit of the said William Nettleton, until he attained the age of twenty-one years,) of all and singular the goods, chattels, and credits of the said deceased, and a true, just, and faithful account of his administration thereof, and of seeing distribution made of the said goods, chattels, and credits, according to law, promoted by George Gibson, Edward Ives Fuller, and George Holt, the assignees of the estate and effects of the said William Nettleton, a bankrupt, the natural and lawful son and only child, and the sole person

entitled to the personal estate and effects of the said deceased, and administrators of all and singular the goods, chattels, and credits of the said deceased, against the said Thomas Price, hath, at the petition of the proctor of the said George Gibson, Edward Ives Fuller, and George Holt, alleging that the said William Nettleton, deceased, departed this life on or about the 26th day of May, 1830, intestate, a widower, leaving behind him the said William Nettleton, his natural and lawful son and only child, the sole person entitled to his personal estate and effects as aforesaid, and that in the month of September, in the said year 1830, letters of administration of all and singular the goods, chattels, and credits of the said deceased were committed and granted, under seal of our said court, to the said Thomas Price, as the curator or guardian lawfully assigned to the said William Nettleton, then a minor, for his use and benefit, and until he should attain the age of twenty-one years, and that the said letters of administration having ceased and expired, by reason of the said William Nettleton having attained the said age, letters of administration of all and singular the goods, chattels, and credits of the said deceased, were, in the month of May last, committed and granted, under seal of the said court, to the said George Gibson, Edward Ives Fuller, and George Holt, as the assignees of the estate and effects of the said William Nettleton, a bankrupt; and further alleging that the said Thomas Price, as administrator of the goods, chattels, and credits of the said William Nettleton, deceased, as aforesaid, together with George Harper, of No. 2, Church Passage, Piccadilly, in the county of Middlesex, butcher, and Henry Hawkins, of No. 44, Berners

Street, Oxford Street, in the same county, coach-carver, became jointly and severally bound in and by a certain bond or obligation, bearing date the 27th day of June, 1832, to the Most Reverend Father in God, William, by Divine Providence Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, his certain attorney, executors, administrators, or assigns, in the penal sum of four thousand pounds, for the faithful administration of him, the said Thomas Price, with a condition thereunder written, that if the said Thomas Price did make or cause to be made a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which had or should come to his hands, possession, or knowledge, and the same, so made, did exhibit or cause to be exhibited into the registry of the said Prerogative Court of Canterbury, at or before the last day of December then next ensuing, and the same goods, chattels, and credits did well and truly administer as therein mentioned, and further did make or cause to be made a true and just account of his said administration, at or before the last day of June, which should be in the year of our Lord 1833, and all the rest and residue of the said goods, chattels, and credits, which should be found remaining upon his said account, the same being first examined and allowed of by the judge for the time being of our said court, should deliver and pay unto such person or persons respectively as the said judge should limit and appoint; and if it should thereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named did exhibit the same into our said court, making request to have it allowed and approved, if the said Thomas Price did render and

deliver the said letters of administration, (approbation of such testament being first had and made,) in our said court, then the said obligation to be void and of none effect, or else to remain in full force and virtue; and further alleging, that the said Thomas Price did not exhibit or cause to be exhibited a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which had come to his hands, possession, or knowledge, or any account of his administration, at the respective times at which he was assigned so to do as aforesaid, but possessed himself of property, being goods, chattels, and credits of the said deceased, and the same did not well and truly administer, but did waste and misapply the same, or convert the same to his own use and purposes; and further alleging, that at no time since has any true and perfect inventory or account been exhibited or rendered, or the said goods, chattels, and credits duly administered, and that on the 27th day of May, 1839, a citation issued in this cause, under seal of our said court, citing the said Thomas Price to exhibit such inventory, and to render a true, just, and faithful account of his administration of the said goods, chattels, and credits of the said deceased, and also to see distribution of the same made according to law; and further alleging, that the said citation, being personally served on the said Thomas Price, was duly returned into court, and that the said inventory and account have not been exhibited or rendered in obedience thereto, decreed the said George Harper and Henry Hawkins to be cited and intimated to appear in judgment on the day, at the time and place, and to the effect hereinafter mentioned, (justice so requiring.) We do therefore hereby authorize and

empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said George Harper and Henry Hawkins to appear personally, or by their proctors or proctor, duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after service of these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said Prerogative Court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten in the forenoon of the same day, and there to abide, if occasion require, during the sitting of the court, then and there to shew good and sufficient cause, if they, or either of them, have or know any, why the aforesaid bond or obligation given and entered into by them, together with the aforesaid Thomas Price, for his faithful administration of the goods, chattels, and credits of the said deceased, should not be permitted to be sued for at common law, and on the same being so sued for, the said bond or obligation should not be attended with and produced, as may be requisite and necessary for the furtherance of justice; and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said George Gibson, Edward Ives Fuller, and George Holt; and moreover that you peremptorily intimate, or cause to be intimated, to the said George Harper and Henry Hawkins, to whom we do also intimate by the tenor of these presents, that if



they do not appear on the day, at the time and place, and to the effect aforesaid, or appearing do not shew good and sufficient cause, concludent in law, to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed and will proceed to permit the said bond or obligation, given and entered into by them, together with the said Thomas Price as aforesaid, to be sued for at common law, and on the same being so sued for, will direct the said bond or obligation to be attended with and produced as may be requisite and necessary for the furtherance of justice, the absence or rather contumacy of the said George Harper and Henry Hawkins, or either of them, in anywise notwithstanding; and what you shall do or cause to be done in the premises you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, this 15th day of July, in the year of our Lord 1839, and in the tenth year of our translation.

*Decree.*

William, &c., greeting:

Whereas the Right Honourable Sir Herbert Jenner, &c., hath, at the petition of the proctor of William Thomas Paris, alleging that John Perrin, late of Brownshill, in the parish of Bisley, in the county of Gloucester, Esquire, departed this life on or about the 23rd day of September, in the year 1822, having first made and duly executed his last will and testament in writing,

Decree  
against  
sureties at  
the instance  
of a legatee.

bearing date the 25th day of August, in the said year, and therein named John Ballinger, sole executor and residuary legatee in trust, and his nephew, Thomas Howell, residuary legatee; that the said John Ballinger duly renounced as well the burthen of the probate and execution of the said will as the letters of administration, with the same annexed, of all and singular the goods, chattels, and credits of the said deceased, and on the 31st day of October, in the said year 1822, letters of administration, with the said will annexed, of all and singular the goods, chattels, and credits of the said deceased were committed and granted, under seal of our said court, to the said Thomas Howell; and further alleging, that the said Thomas Howell, as such administrator aforesaid, together with Nathaniel Partridge, of Stroud, in the said county of Gloucester, Dyer, and Charles Newman, of the same place, Gentleman, became jointly and severally bound, in and by a certain bond or obligation, bearing date the 19th day of October, in the said year 1822, to the Most Reverend Father in God, Charles, by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, his certain attorney, executors, administrators, or assigns, in the penal sum of twenty thousand pounds, for the faithful administration of him, the said Thomas Howell, with a condition thereunder written, that if the said Thomas Howell did make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which had or should come to his hands, possession, or knowledge, and the same, so made, did exhibit, or cause to be exhibited, into the registry of our said Prerogative Court of Canterbury, at or before

the last day of April then next ensuing, and the same goods, chattels, and credits did well and truly administer; that is to say, did pay the debts of the said deceased, which he did owe at his decease, and then the legacies contained in the said will annexed to the said letters of administration so to him committed as far as his goods, chattels, and credits would thereto extend, and the law charge him, and further did make or cause to be made a true and just account of his said administration when he should be thereunto lawfully required, and all the rest and residue of the said goods, chattels, and credits which should be found remaining upon the said account, (and not otherwise disposed of in the said will,) the same being first examined and approved by the judge of the said court for the time being, should distribute and dispose in such a manner and form as should be limited by the discretion of the said judge; and lastly did at all times thereafter clearly acquit, discharge, and save harmless the said Lord Archbishop of Canterbury, the said judge, and other officers of the said court, against all persons having or pretending to have any right, title, or interest unto the goods, chattels, and credits of the said deceased, then the said obligation to be void and of none effect, or else to remain in full force and virtue. And further alleging that the said testator did in and by his said will give and bequeath all and singular his personal estate and effects to the said John Ballinger upon trust, (amongst other things,) to place out and invest the sum of one thousand pounds, part of his said personal estate upon government or real security, and to pay and divide the said sum or otherwise transfer or assign the security upon which the same might be invested unto and

amongst all and every the children of Henry Rudge, of Stroud, in the county of Gloucester, and Harriett, his wife, who should be living at the time of his, the said testator's, decease, if more than one, in equal shares and proportions, when and as they should severally arrive at and attain their respective ages of twenty-one years. And further alleging that the said Henry Rudge and Harriett Rudge, his wife, have had lawful issue of their bodies living at the decease of the said testator, three children, to wit, Henry Rudge, John Rudge, and Frederick Rudge, and that the said Henry Rudge hath since the premises, to wit, on the 22nd day of April, in the year 1840, attained the full age of twenty-one years, and is therefore, and as the son of the said Henry Rudge and Harriett Rudge, his wife, one of the legatees named in the said will, and is entitled to a third share or proportion of the aforesaid legacy, but being resident at Rio de Janeiro, in the empire of Brazil, hath, in and by a letter of attorney under his hand and seal, duly nominated and appointed the said William Thomas Paris his lawful attorney, for the purpose of recovering and receiving from the trustees of the estate of the said deceased, or any person or persons who may have made themselves responsible for its payment, the said one third part or share of the aforesaid legacy. And further alleging that the said Thomas Howell did not exhibit or cause to be exhibited an inventory of all and singular the goods, chattels, and credits of the said deceased which had come to his hands, possession, or knowledge at the time at which he was assigned so to do as aforesaid, but possessed himself of the whole of the goods, chattels, and credits of the said deceased, and the same did not well

truly administer, but did waste and misapply part of the said goods, chattels, and credits, or convert the same to his own use and benefit. And further alleging that on the 2nd day of February last, a citation issued under seal of our said court, against the said Thomas Howell, to exhibit, bring into, and leave in the registry of our said court, an inventory of all and singular the goods, chattels, and credits of the said deceased, which had at any time come to his hands, possession, or knowledge, and to render a true and just account of his administration of the same, and that the said citation having been personally served on the said Thomas Howell, was duly returned into court; and the said inventory and account were exhibited and brought in, in obedience thereto, and that therein the said Thomas Howell admitted assets for the payment of the said legacy; and further alleging that thereupon, to wit, on the 19th day of May last, a suit for subtraction of legacy was instituted in the Arches Court of Canterbury, by the said William Thomas Paris, against the said Thomas Howell, but the same terminated by the decease of the said Thomas Howell before any decree had been made for the payment of the said legacy, and that on the 29th day of August last, the said Thomas Howell departed this life intestate and totally insolvent, without having paid the aforesaid legacy, or the share or proportion thereof due to the said Henry Rudge, the younger, or invested it upon government or real security, or transferred or assigned the same to the said Henry Rudge, or any person on his behalf, (as in and by an affidavit duly made and sworn to by the said William Thomas Paris, produced and shewn to our

commissary aforesaid, and now remaining in the registry of our said court, will appear,) decreed the said Nathaniel Partridge and Charles Newman to be cited, intimated, and called to appear in judgment, on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, (justice so requiring.) We do therefore hereby authorize and empower and strictly charge and enjoin you, jointly and severally, peremptorily to cite or cause to be cited the said Nathaniel Partridge and Charles Newman, to appear personally, or by their proctors or proctor duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after service of these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said Prerogative Court; otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court, then next ensuing, at the hour of ten in the forenoon of the same day, and there to abide, if occasion require, during the sitting of the court, then and there to shew good and sufficient cause, if they or either of them have or know any, why the aforesaid bond or obligation given and entered into by them together with the aforesaid Thomas Howell, now deceased, for his faithful administration of the goods, chattels, and credits of the said deceased, bearing date the 19th day of October, in the year 1822, as aforesaid, should not be permitted to be sued for at common law, and on the same being so sued for, the said bond or

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obligation attended with and produced as may be requisite and necessary for the furtherance of justice. And further to do and receive, &c.

Dated at London, this 6th day of December, in the year of our Lord 1841, and in the fourteenth year of our translation.

The decree having been served upon the sureties, and an appearance given for them on the day of its return, with intent to shew cause against the mandate, their proctor is then assigned to bring in an act on petition in support of the views of his clients. This act having been delivered on a subsequent court-day to the proctor of the promoter, is also written to by him in turn, and unless subject matter should thereupon arise for a reply or rejoinder, it is concluded, and proofs or affidavits are then filed, in verification of the averments, on which the cause is afterwards heard, and a decree made.

### *Act on Petition.*

On the first session of Hilary Term, to wit, Saturday, the 15th day of January, 1842.

RUDGE, by his attorney, *against* PARTRIDGE and  
NEWMAN.

Act on petition as to the liability of the sureties.

On which day Pitcher appeared to the decree for Nathaniel Partridge and Charles Newman, the parties cited, and exhibited a proxy under their hands and seals, and prayed to be heard on his petition, and the Right Honourable the Judge assigned him to bring in his act on petition on the second session. Then the said Pitcher, as the proctor and on behalf of the said

Nathaniel Partridge and Charles Newman, alleged that John Perrin, the testator in this cause, by his last will and testament, dated the 15th day of August, 1822, bequeathed all his personal estate to John Ballinger upon trust, (amongst other things,) as to the sum of three thousand pounds, to invest the same on Government or real security, and pay the annual interest arising therefrom to Stephen Blackwell, and Elizabeth his wife, (one of the testator's nieces,) for the maintenance and education of their children living at the time of his decease, during their minorities, and to pay and divide the said sum, or transfer or assign the security upon which the same should be invested, unto and amongst all and every the said children, when and as they should severally attain their respective ages of twenty-one years; and as to the sum of one thousand pounds, to invest the same in like manner, and pay in like manner the annual interest to Henry Rudge and Harriett, his wife, (another of his testator's nieces,) for the maintenance and education of their children living at his decease, during their minorities, and also in like manner to pay and divide the said sum, or transfer and assign the security upon which the same should be invested, unto and amongst all and every such their children upon their attaining their majorities or ages of twenty-one respectively, and that of his said will, he, the testator, appointed the said John Ballinger sole executor. And Pitcher further alleged that letters of administration with the said will annexed were duly granted under seal of this court to Thomas Howell the residuary legatee, absolutely therein named on the renunciation of the said John Ballinger, (as by the acts and records of this court, and the said will to which



Pitcher craves leave to refer will appear,) the said Thomas Howell being the nephew of the said testator, and the brother of the said Elizabeth Blackwell and Harriett Rudge, and that upon the occasion of such grant of administration, his parties, the said Nathaniel Partridge and Charles Newman, became the sureties of the said Thomas Howell, and joined with him in executing the usual administration bond. And Pitcher further expressly alleged, that the said Thomas Howell, thereafter, pursuant to the directions of the said will, invested the several legacies or sums of three thousand pounds and one thousand pounds aforesaid on real security, to wit, by executing a mortgage in fee to William and Peter Playne, (persons chosen and agreed to by all parties, to act as, and in the character of, trustees for the said two families, and the former then and still a trustee for the said Elizabeth Blackwell and Harriett Rudge, and their families respectively, under their late father's will,) upon an estate called the Griffin's Mill Estate, at Stroud, in the county of Gloucester, the property of him, the said Thomas Howell, for securing to the said William and Peter Playne, the sum of three thousand eight hundred and eighty pounds, being the amount of the said two legacies, (less the duty,) with interest at four per cent, the said William and Peter Playne, at the same time executing a deed or declaration of trust declaring the object of the said mortgage, and covenanting with the said Elizabeth Blackwell, (then a widow,) and the said Henry and Harriett Rudge, (who were all three also parties to and signed the said deeds,) to stand possessed thereof, subject to or upon the trusts declared in the will aforesaid, respecting the several sums of

three thousand pounds and one thousand pounds aforesaid, thereby invested pursuant to the directions of the said will. And Pitcher expressly alleged that the said Griffin's Mill Estate was, at the time of such investment, of the estimated value of ten thousand pounds, and actually let at four hundred pounds per annum, and that the then incumbrances thereon amounted to the sum of three thousand six hundred pounds only, and no more. And Pitcher further alleged that the investment of the sums aforesaid, by means of the mortgage aforesaid to the said William and Peter Playne, was given and accepted with the full and entire concurrence of the said Elizabeth Blackwell and the said Henry and Harriett Rudge, on behalf of themselves and their children, respectively, and that the said several sums still are, to wit, by means of the mortgage aforesaid, so invested on real security, pursuant to the directions contained in the aforesaid testator's will, under other or further directions in which will contained, (and hereinbefore recited,) the said Henry Rudge the younger, acting by his attorney, the said William Thomas Paris, may be entitled to the transfer or assignment of one third of the security on which the sum of one thousand pounds, one of the two aforesaid sums, is invested as aforesaid, or otherwise howsoever, under the said will, but that he, the said Henry Rudge the younger, has, under the circumstances aforesaid, no right or pretence for putting in suit the aforesaid administration-bond against his parties, the said Nathaniel Partridge and Charles Newman, to shew cause against which they, his said parties, have been, (as he Pitcher submits, most improperly and vexatiously,) cited by the said Henry Rudge the younger, acting by his said attorney in this suit. And

Pitcher lastly alleged, that the said Henry Rudge the younger, by his attorney, to wit, the identical William Thomas Paris, since attaining his majority, hath actually demanded and received interest on one third of nine hundred and seventy pounds (balance of the sum of one thousand pounds aforesaid,) invested as aforesaid, to wit by the mortgage aforesaid. Wherefore the said Pitcher, referring as aforesaid, and also to other proofs to be by him brought in if necessary, prayed the Right Honourable the Judge to dismiss his said parties from this suit, and all further observance of justice therein, and to condemn the said Henry Rudge the younger, and William Thomas Paris, his attorney, in costs.

In the presence of Buckton, proctor for the said Henry Rudge the younger, acting by his attorney, the said William Thomas Paris, and who dissented and denied the allegations of Pitcher to be in great part either true or relevant, and alleged that his said party is the natural and lawful son of the said Henry Rudge and Harriett Rudge, his wife, and as such is a legatee of a third part or share of the said sum of one thousand pounds given and bequeathed in and by the will of the said John Perrin, deceased, to the children of the said Henry Rudge the elder, and Harriett, his wife, and who at the decease of him, the said John Perrin, were and still are three in number. And he further alleged that the said Thomas Howell after taking upon himself letters of administration, with the said will annexed, of the goods, chattels, and credits of the said John Perrin, deceased, possessed himself of assets considerably more than sufficient to discharge all the

debts due by the said testator and the legacies contained in his said will, but, notwithstanding, misapplied and converted the same to his own use, without paying any part of the said legacy of one thousand pounds, or investing the same upon good or sufficient security. And Buckton further alleged that Pitcher's said parties finding that the said Thomas Howell had wasted and misapplied the estate of the said John Perrin, deceased, took a mortgage in fee of an estate called Griffin's Mill, belonging to the said Thomas Howell, by way of securing themselves from their liability under the bond or obligation referred to in these proceedings, in respect both of the said legacy of one thousand pounds, to the children of Henry and Harriett Rudge, and also of a further legacy of three thousand pounds to the children of Stephen Blackwell and Elizabeth, his wife. And Buckton alleged that the said estate was at such time already incumbered with two charges, to wit, the sum of two thousand six hundred and fifty-one pounds settled upon and thereby secured to his, the said Thomas Howell's wife, and a mortgage to the amount of one thousand pounds, with interest, to a person named Taylor, but notwithstanding the premises, the aforesaid mortgage to the said Messrs. William and Peter Playne, purports to be a second charge only upon the said property. And Buckton alleged that the said incumbrances did then and do now amount in the whole to the sum of seven thousand five hundred and thirty-one pounds; and that the said estate then was and if now sold would not be of more than sufficient value for the full payment of the two first charges upon it, of two thousand six hundred and fifty pounds and one thou-

sand pounds, and never was of the value of ten thousand pounds, nor was ever worth the clear rent of four hundred pounds per annum, as by Pitcher falsely alleged; and Buckton alleged that the said pretended mortgage was executed during the minority and without the consent of his said party and his co-legatees, and that the said Thomas Howell never made any investment of the aforesaid legacy, save as aforesaid. And Buckton further alleged, that since the premises, to wit, on the 22nd day of April, 1840, his party, the said Henry Rudge, attained his majority, and being resident at Rio de Janeiro, where he still is, did, by letter of attorney, under his hand and seal, bearing date the 5th day of May, 1840, authorize the said William Thomas Paris to recover and receive from the trustees of the estate of the said John Perrin, deceased, or any person or persons who may have made themselves responsible for its payment, his one-third part or share of the said sum of one thousand pounds; and he, the said William Thomas Paris, acting under such authority, for some time, to wit, up to the 22nd day of January, 1841, received interest on the said legacy on behalf of his said constituent, in the proportion of his said share, but he, the said William Thomas Paris, on such occasions, constantly repudiated the said pretended mortgage, and the said Thomas Howell expressly admitted and agreed that such interest was not received by the said William Thomas Paris, in reference to the same; and Buckton alleged, that the said William Thomas Paris, as such attorney aforesaid, made frequent applications to the said Thomas Howell for the payment of the said share of the legacy of one thousand pounds, but as the said Thomas Howell constantly de-

clined discharging the same, he, the said William Thomas Paris, accordingly, to wit, on the 2nd day of February, 1841, with a view of ascertaining the existence of assets, extracted a citation, under seal of this court, against the said Thomas Howell, to exhibit, on oath, an inventory of the effects of the said John Perrin, deceased, and an account of his administration thereof; that the same were afterwards brought into the registry of this court on behalf of the said Thomas Howell, and he therein admitted that he had received, as such administrator aforesaid, more than sufficient effects to pay and discharge all the debts due from the said testator and the legacies left in his said will. That accordingly, the said William Thomas Paris, to wit, on the 19th day of May, 1841, instituted proceedings in the Court of Arches against the said Thomas Howell, in a cause of subtraction of legacy, and for the recovery of the beforementioned share of the said legacy; that an absolute appearance was given to the citation issued in the said cause, by or on behalf of the said Thomas Howell, and a libel was brought in and admitted therein; but the said proceedings afterwards, to wit, on the 29th day of August, 1841, ceased and determined, in consequence of the decease of the said Thomas Howell on that day; and Buckton further alleged, that the said Thomas Howell died intestate and totally insolvent, and that letters of administration of his effects have not been taken by any person whomsoever; and Buckton lastly submitted, that the pretended mortgage alleged by Pitcher is not an investment of the legacy in compliance with the directions of the said will, nor is the same binding upon the said Henry Rudge the younger; but that Pitcher's said

parties have become liable for the due and full payment of the said legacy, or the proportion thereof, due to the said Henry Rudge, through the breach and default of the said Thomas Howell, deceased; and, in verification of what he so alleged, the said Buckton craved leave to refer to the acts and records of this court, and of the Arches Court of Canterbury, and to other proofs by him brought into, or to be brought into, the registry of this court. Wherefore he prayed the Right Honourable the Judge to permit the bond or obligation entered into by the said Nathaniel Partridge and Charles Newman with the said Thomas Howell, deceased, on granting letters of administration, with the said will annexed, of the goods, chattels, and credits of the said John Perrin, deceased, to him the said Thomas Howell, (the said bond bearing date the 19th day of October, in the year 1822, and now remaining in the registry of this court,) to be sued for at law, and on the same being so sued for, to direct the said bond to be attended with and produced, as may be requisite and necessary for the furtherance of justice, and to condemn the said Nathaniel Partridge and Charles Newman in the costs of this suit.

In the presence of Pitcher dissenting, and further alleging, that in Hilary Term, 1825, the said Thomas Howell, having at such time got in and possessed himself of sufficient assets for the payment as well of the said testator's debts as of all the legacies contained in his will, and having made various payments to the said Stephen and Elizabeth Blackwell, and the said Henry and Harriett Rudge respectively, on account of the interest of the several legacies of three thousand pounds and one thousand pounds therein bequeathed to

them and their families respectively, but without any such investment of the principal of the said legacies, as in and by the said will directed, the said Elizabeth Blackwell, widow of the said Stephen Blackwell, who was then recently dead, on her own behalf and that of her two infant children, and the said Henry and Harriett Rudge, on their own behalf and that of their three infant children, (one of such being the identical Henry Rudge, the party promoting this cause,) filed their bill of complaint in the High Court of Chancery, reciting to the above effect, and praying, amongst other things, the appointment of fit trustees for the said legacies of three thousand pounds and one thousand pounds respectively, and that the said Thomas Howell should account unto the said Elizabeth Blackwell and Henry and Harriett Rudge for the interest of the same respectively up to that time, and should secure the amount of the said several legacies, together with the payment of further interest thereon, to the trustees so to be appointed; and Pitcher further alleged, that after certain proceedings were had and taken in the said suit in the said High Court of Chancery, an arrangement was made and concluded, to wit, in the month of July, 1825, between the parties thereto, in pursuance whereof the said suit was suffered to abate, such arrangement being, as he, Pitcher, expressly alleged, the investment of the said several legacies of three thousand pounds and one thousand pounds, by means of the mortgage in fee to the said William and Peter Playne, and their executing a trust deed declaring the objects of the said mortgage, as by him, Pitcher, hereinbefore set forth; and Pitcher repeated his allegations, that at the time of such mortgage and declaration of trust, to wit, in July, 1825, the



premises mortgaged were accounted by competent judges conversant with that description of property, of the value of ten thousand pounds, as by him also hereinbefore set forth, and that as well by reason thereof, as of other the circumstances of this case, there is no pretence for the prayer by Buckton insisted upon on behalf of his party. Wherefore he prayed that his parties might be dismissed from any further observance of justice in this cause, with their costs.

In the presence of Buckton, dissenting and denying, and alleging and praying, as by him before alleged and prayed, whereupon the Right Honourable the Judge assigned to hear his pleasure on petition of both proctors whensoever.

Should no appearance, however, be entered on the part of the sureties, after service of the decree, either on the day of its return or the court-day next ensuing, application may be made to the judge to obtain the bond, in pain of their absence; but before this can be done, notice in writing is required to be given to the parties of the step about to be taken, in order that they may, at the eleventh hour, appear and evade the threatened proceeding. If, notwithstanding this notice, which must be served personally upon the individuals, no appearance is given on the day appointed for the application to the judge to pronounce them in contempt, the latter will, as a matter of course, on the motion of an advocate, decree or direct the bond to be sued for at law, and to be attended with, whenever required for the furtherance of justice. But before the parties can avail themselves of this decree, they must

execute the following bond of indemnity to the ordinary.

*Bond of Indemnity.*

Bond of indemnity.

Know all men by these presents, that we, George Gibson, of Basinghall Street, in the city of London, Esquire; Edward Jones Fuller, of Margaret Street, in the county of Middlesex, Coachmaker; and George Holt, of Maida Hill, in the same county, Gentleman, are held and firmly bound unto the Most Reverend Father in God, William, by Divine Providence Lord Archbishop of Canterbury, Primate of all England, and Metropolitan, in the sum of five hundred pounds, of good and lawful money of Great Britain, to be paid to the said Most Reverend Father in God, or his certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, and every of us, for the whole, our heirs, executors, and administrators firmly by these presents, sealed with our seals.

Dated the 31st day of July, 1840.

Whereas William Nettleton, late of Berwick Street, Soho, in the parish of Saint Anne, Westminster, in the county of Middlesex, Tailor, died on or about the 26th day of May, 1830, intestate, and letters of administration of all and singular the goods, chattels, and credits of the said William Nettleton were, in the month of September, in the same year 1830, granted to Thomas Price, of No. 2, Alsop's Terrace, New Road, Regent's Park, in the said county of Middlesex, Gentleman, the curator or guardian lawfully assigned to William Nettle-

ton, a minor, (stated to be the natural and lawful son and only child of the said William Nettleton, deceased,) by or out of the Prerogative Court of the Archbishop of Canterbury, for the use and benefit of the said minor, and until he should attain the age of twenty-one years; and whereas, by a certain bond or obligation in writing, bearing date the 27th day of June, 1832, the said Thomas Price, together with George Harper, therein described as of No. 2, Church Passage, Piccadilly, in the said county, butcher, and Henry Hawkins, therein described as of No. 44, Berners Street, Oxford Street, in the same county, coach-carver, jointly and also severally became bound unto the above-named Most Reverend Father in God, in the sum of four thousand pounds, of good and lawful money of Great Britain, with a condition thereunder written for making void the same, if the said Thomas Price should make or cause to be made a true and perfect inventory of all and singular the goods, chattels, and credits of the said deceased, which had or should come to the hands, possession, or knowledge of him, the said Thomas Price, or unto the hands, possession, or knowledge of any other person or persons for him, and the same should exhibit, or cause to be exhibited, into the registry of the Prerogative Court of Canterbury, at or before the last day of December then next ensuing, and the same goods, chattels, and credits, and all other the goods, chattels, and credits of the said deceased, at the time of his death, which at any time after should come to the hands or possession of any person or persons for him, should well and truly administer, according to law; and further should make or cause to be made a true and just account of his said administration, at or

before the last day of June, 1833, and all the rest and residue of the said goods, chattels, and credits, which should be found remaining upon the said administrator's account, (the same being first examined and allowed of by the judge or judges for the time being of the said court,) should deliver and pay unto such person or persons respectively as the said judge or judges, by his or their decree or sentence, (pursuant to the true intent and meaning of an Act of Parliament, entitled "An Act for the better Settling of Intestates' Estates,") should limit or appoint, and if it should thereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named should exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said Thomas Price, being thereunto required, should render and deliver the said letters of administration, approbation of such testament being first had in the said court; and whereas, by a decree of the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, dated the 6th day of November last, made upon suit and proceedings instituted before him by the said George Gibson, Edward Ives Fuller, and George Holt, against the said Thomas Price, George Harper, and Henry Hawkins, the said judge decreed the said recited bond or obligation, then remaining in the registry of the said court, and so as aforesaid entered into by the said George Harper, Henry Hawkins, and Thomas Price, bearing date the 27th day of June, 1832, to be attended with, for the purpose of being sued upon at common law, and, on the same being so sued, directed the bond to

be produced and attended with, as might be requisite and necessary for the furtherance of justice; and whereas the said Most Reverend Father in God hath requested to be indemnified by the said George Gibson, Edward Ives Fuller, and George Holt, in manner hereinafter mentioned, against all costs and expenses which may be incurred, or which may fall upon him, in consequence of any suit which may be instituted by them upon the said recited bond, and of his name being used in putting the same in force, pursuant to the said recited decree; now the condition of the above written bond or obligation is such that if the above bounden George Gibson, Edmund Ives Fuller, and George Holt, some or one of them, their or one of their heirs, executors, or administrators, do and shall, from time to time, and at all times for ever hereafter, well and effectually save, defend, keep harmless, and indemnified the said Most Reverend Father in God, his successors, executors, administrators, and assigns, and every of them, of, from, and against all costs, charges, damages, and expenses whatsoever, which shall or may in any manner fall upon, or be incurred by, or recovered against, or become due, payable, or demandable from the said Most Reverend Father in God, or his successors, executors, administrators, or assigns, or any of them, for or by reason, or means, or on account of any action, suit, or other proceeding, legal or equitable, which shall or may be brought or prosecuted by them, the said George Gibson, Edward Ives Fuller, and George Holt, or any of them, their or any of their heirs, executors, administrators, or assigns, in the name or names of the said Most Reverend Father in God and his successors, by virtue of the above recited decree, or any other decree

or decrees hereafter to be made, or of any power or authority whatsoever, then the above written bond or obligation to be void and of none effect, or else to remain in full force and virtue.

Sealed and delivered, &c.

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### CITING TO ACCEPT OR REFUSE PROBATE OR LETTERS OF ADMINISTRATION.

IF the executor appointed in a will will neither prove it nor renounce in due form, the residuary legatee named in the same will is entitled to cite him to accept or refuse the probate, or shew cause why letters of administration, *cum testamento annexo*, of the goods of the deceased should not be committed to himself.

In like manner a legatee or a creditor of the deceased may call upon both the executor and residuary legatee to accept or refuse, &c.

In the case of an intestacy, a person entitled to a distributive share of the deceased's estate, under the statute, although not a next of kin, may cite the next of kin to accept or refuse the letters of administration, or shew cause why the same should not be granted to him.

In the same case a creditor must first cite all persons who have a statutory interest in the estate. A person also having a limited interest in the estate of the deceased is entitled to cite all those who are interested generally therein.

The foregoing remarks will be sufficient to explain this section of Ecclesiastical Practice, which perhaps more strictly belongs to the common form side of that jurisdiction.

The processes or decrees, before alluded to, by which the citation is effected, contain an intimation, by virtue of which, on the non-appearance of the parties cited, after the return of the instrument, the proceedings of the court are regulated.

The following forms will serve as an illustration :—

### *Decree.*

William, by Divine Providence, Archbishop of Canterbury, &c.

Whereas the Worshipful \_\_\_\_\_, Doctor of Laws, and Surrogate of the Right Honourable Sir John Nicholl, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding, hath, at the petition of the proctor of Thomas Browne, alleging that Samuel Adlam Bayntun, formerly a captain in the Royal Regiment of Life Guards, late of Cockspur Street, in the county of Middlesex, Esquire, deceased, (having whilst living, and at the time of his death, goods, chattels, and credits in divers dioceses and peculiar jurisdictions, within the province of Canterbury, sufficient to found the jurisdiction of our said Prerogative Court,) departed this life on or about the 28th day of September, in the year 1833, a bachelor, and intestate, leaving behind him the Reverend Henry Bayntun, Clerk, his natural and lawful father; and further alleging that the said Thomas Browne

Decree to accept or refuse letters of administration.

is a creditor of the said deceased, (as in and by an affidavit duly made and sworn to by the said Thomas Browne, and now remaining in the registry of our said court, reference being thereto had, will appear,) decreed the said Henry Bayntun to be cited, intimated, and called to appear in judgment, on the day, at the time and place, in manner and form, and to the effect hereinafter mentioned, (justice so requiring:) we do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Henry Bayntun to appear personally, or by his proctor lawfully constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after he shall have been served with these presents, if it be a general session, bye-day, caveat-day, or additional court-day of our said Prerogative Court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten in the forenoon of such day, and there to abide, if occasion require, during the sitting of our said court, and then and there to accept or refuse the letters of administration of all and singular the goods, chattels, and credits of the said deceased, otherwise to shew good and sufficient cause, concludent in law, if he has or knows any, why such letters of administration of all and singular the goods, chattels, and credits of the said deceased should not be committed and granted, by the authority of our said court, to the said Thomas Browne, a creditor of



the said deceased, upon giving the usual security, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Thomas Browne; and you are moreover to intimate, or cause it to be intimated, to the said Henry Bayntun, to whom we so intimate by the tenor of these presents, that if he does not appear, at the time and place, in manner and form, and to the effect hereinbefore set forth, or appearing doth not shew good and sufficient cause, concludent in law, to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to and will proceed to decree, grant, and commit letters of administration of all and singular the goods, chattels, and credits of the said Samuel Adlam Bayntun, deceased, to the said Thomas Browne, a creditor of the said deceased, the absence or rather contumacy of the said Henry Bayntun in anywise notwithstanding; and what you shall do or cause to be done in the premises you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated, &c.

### *Decree.*

William, by Divine Providence, &c.

Whereas the Worshipful Frederic Thomas Pratt, Doctor of Laws, and Surrogate, &c., rightly and duly proceeding, at the petition of the proctor of Thomas Talbot, alleging that Mary Lewis, formerly of Harley Street, Marylebone, then of No. 24, New Street,

Decree to accept or refuse letters of administration, *cum testamento annexo.*

Bedford Square, Stepney, but late of Shoreditch Work-house; all in the county of Middlesex, spinster, deceased, (having whilst living, &c.,) died on the 18th day of April, in the year 1843; having first made and duly executed her last will and testament in writing, and thereof appointed her nephew, William Lindquist, sole executor, and thereby gave and bequeathed to him, the said William Lindquist, the residue of her personal estate and effects upon trust to invest the same for the benefit of all and every the children of him the said William Lindquist, who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters, should attain that age, or marry under that age with the consent of her or their parent or parents, guardian or guardians, for the time being, and to be equally divided between and amongst them, and if there should be no such child, she, the testatrix, gave and bequeathed the same to the said William Lindquist, for his own absolute use and benefit, (and in and by the said will brought into and now remaining in the registry of this court, appears;) and further alleging that Diana Lindquist, spinster, Christiana Lindquist, spinster, William Lindquist, the younger, and Horatio Lindquist, are the natural and lawful and only children of the said William Lindquist, and as such are the residuary legatees, named in the said will as aforesaid; and that the said Diana Lindquist is now in her minority, to wit of the age of seven years and upwards, but under the age of twenty-one years, and the said Christiana Lindquist, William Lindquist, the younger, and Horatio Lindquist, are now respectively in their infancy, to wit, the said Christiana Lindquist of the age of five years and upwards, the said

William Lindquist, the younger, of the age of three years and upwards, and the said Horatio Lindquist, of the age of two years and upwards, but respectively under the age of seven years. And further alleging that the said Thomas Talbot is the natural and lawful father and curator or guardian, lawfully assigned to George Talbot, a legatee named in the said will of the said deceased, and who is now in his minority, (as by the acts and records of our said court, on reference being thereunto had, will appear;) decreed the said William Lindquist, Diana Lindquist, spinster, Christiana Lindquist, spinster, William Lindquist, the younger, and Horatio Lindquist, to be cited, intimated, and called to appear in judgment, on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, (justice so requiring;) we do, therefore hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite or cause to be cited, the said William Lindquist, Diana Lindquist, Christina Lindquist, William Lindquist the younger, and Horatio Lindquist, by shewing to them respectively these original presents under seal, and by leaving with each of them a true copy hereof, to appear, to wit, the said William Lindquist, personally, or by his proctor duly constituted, and the said Diana Lindquist, Christiana Lindquist, William Lindquist the younger, and Horatio Lindquist, lawfully, before our master, keeper, or commissary, &c., on the sixth day after the service of these presents, if it be a general session, &c., then and there, to wit, the said William Lindquist, to accept or refuse, as well the probate or execution of the said will, as the letters of administration (with the same annexed,) of all and singular the goods, chattels, and

credits of the said deceased, and the said Diana Lindquist, Christiana Lindquist, William Lindquist the younger, and Horatio Lindquist, to accept or refuse the said letters of administration, (with the said will annexed) of all and singular the goods, chattels, and credits of the said deceased; otherwise respectively to shew good and sufficient cause, if they, or any, or either of them, have or know any, why the said letters of administration (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased, should not be committed and granted to the said Thomas Talbot, as the natural and lawful father and curator or guardian, lawfully assigned to the said George Talbot, the minor aforesaid, for his use and benefit, until he shall attain the age of twenty-one years; and further, &c. And moreover that you intimate, or cause to be intimated, to the said William Lindquist, Diana Lindquist, Christiana Lindquist, William Lindquist the younger, and Horatio Lindquist, (and to whom we do also intimate by the tenor of these presents,) that if they, or any or either of them, do not appear, &c., our master, &c., doth intend to proceed, and will proceed, to decree, grant, and commit letters of administration (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased, to the said Thomas Talbot, as the natural and lawful father and curator or guardian, lawfully assigned, to the said George Talbot, for his use and benefit, until he shall attain the age of twenty-one years, the absence, &c. And what, &c.

Dated at London, &c.

*Decree.*

William, by Divine Providence, &c.

Whereas the Worshipful \_\_\_\_\_, Doctor of Laws, and Surrogate, &c., rightly and duly proceeding, hath, at the petition of the proctor of Emily Georgiana Wood, widow, alleging that on the 29th day of June, 1842, the said Emily Georgiana Wood filed her bill of complaint in the High Court of Chancery, of Great Britain, against Rebecca Wood, widow, William Wood, George Senior, and Mary his wife, and others therein, (amongst other things,) setting forth that John Wood, late of Bradford, in the county of York, innkeeper, by his last will and testament, bearing date the 1st day of October, 1813, (amongst other things,) requested his trustees and executors, thereafter mentioned, to permit his wife, Rebecca Wood, with the assistance of his son William Wood, to carry on his business as an innkeeper so long as it might be advantageous for his family, and he, the said testator, by his said will gave, devised, and bequeathed to his said wife Rebecca Wood, his said son William Wood, and John Maud, and William Sharpe, all his real and personal estate upon trust, (after appropriating and investing the sum of one thousand pounds for the use of the said Rebecca Wood, as therein mentioned,) to stand possessed as to two equal ninth parts thereof, in trust for his said son William Wood, his executors, administrators, and assigns, and as to the remaining seven ninths thereof, upon trust for all and every other of his, the testator's children equally to be divided between them, and their respective executors and

Decree to accept probate, or shew cause against limited letters of administration.

administrators, and the said testator of his said will appointed the said Rebecca Wood, William Wood, John Maude, and William Sharpe, executors. That the said testator departed this life on the 17th day of September, 1815, leaving the said Rebecca Wood, widow, his relict, and eight children, to wit, Mary Wood, William Wood, John Wood, Robert Wood, Rebecca Wood, Ann Wood, Hannah Wood, and Richard Wood, him surviving. That the said Rebecca Wood, William Wood, John Maud, and William Sharpe, the executors aforesaid, afterwards duly proved the said will, and also deemed it advantageous and for the benefit of the said testator's said family, to continue and carry on his said business with the whole of the capital then employed therein, and the same hath ever since the death of the said testator been carried on by the said Rebecca Wood and William Wood, upon the trusts of the said will and for the benefit of the testator's said family. That the said John Maud and William Sharpe acted as such trustees as aforesaid, and permitted the said Rebecca Wood and William Wood, to possess the said testator's property and effects, and to use and apply the same as they might think fit, but are since respectively dead. That he, the said William Wood, refuses to render any account of the said trust estates and effects, or of the said business, and the profits thereof. That the said Richard Wood has since departed this life intestate, and letters of administration of his personal estate and effects have been duly granted to the said Emily Georgiana Wood, the relict of him, the said deceased. And praying relief in the premises, as in the said bill is set forth. And further alleging that divers proceedings have been had in the

aforesaid suit, but that no further proceedings can be had therein until there is a legal personal representative of the said Rebecca Wood, widow, before the said Court of Chancery; and farther alleging that the said Rebecca Wood, was late of Bradford in the county of York, and departed this life on or about the 14th day of January, in the year 1843, a widow, (having whilst living, &c.,) and having first made and duly executed her last will and testament in writing, and therein appointed her son William Wood sole executor and residuary legatee, who hath not proved the said will, (at least in our said court,) nor have letters of administration, (with the same annexed,) of all and singular the goods, chattels, and credits of the said deceased, been committed and granted by the authority of our said court to any person whomsoever, so that there is not at present any legal personal representative of the said Rebecca Wood, deceased, decreed the said William Wood to be cited, &c. We do, therefore, &c., cite, or cause to be cited, the said William Wood, by shewing to him these presents, &c., to appear personally, or by his proctor duly constituted, before our master, &c., on the third day after he shall have been served with these presents, if it be a general session, &c., then and there to accept or refuse, as well the probate and execution of the said will of the said Rebecca Wood, widow, deceased, as the letters of administration, (with the same annexed,) of all and singular the goods, chattels, and credits of the said deceased,) otherwise to shew good and sufficient cause, if he hath or knows any, why letters of administration of the goods, chattels, and credits of the said deceased, limited to the purpose only, to become and be made a

party to the aforesaid cause or suit depending in the High Court of Chancery of Great Britain, and to attend, supply, substantiate, and confirm the proceedings already had, or that shall or may hereafter be had therein, or in any other cause or suit which may be commenced in the said court, or in any other court, between the beforementioned parties, or any other parties, touching and concerning the matters at issue in the said cause or suit, and until a final decree shall be had and made therein, and the said decree carried into execution, and the execution thereof fully completed, but no further, or otherwise, or in any other manner to be committed and granted to James Freeman, of Crescent Place, Blackfriars, in the city of London, Gentleman, as a person for that purpose named by and on the part and behalf of the said Emily Georgiana Wood, on giving the usual security, and further to do, &c.; and moreover, that you intimate, &c., our master, &c., doth intend to proceed, and will proceed, to decree, grant, and commit letters of administration of the goods, chattels, and credits of the said Rebecca Wood, widow, deceased, under the limitations hereinbefore mentioned, to the said James Freeman, as a person for that purpose named by and on the part and behalf of the said Emily Georgiana Wood, the absence, &c.

Given at London, &c.

The decree having been served, is returned into court on the session, &c., following the service, and on the ensuing session, &c., if no appearance be given, the grant is moved for by counsel, and decreed by the judge *in paenam* of the party or parties cited.



## GENERAL PRACTICE.

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**MANY** points of practice have been explained, while others have been only briefly adverted to in the preceding pages, and the latter, therefore, now demand a more particular explanation.

The forms of the citation and decree have been already given.

The service of the citation or decree, and of all other ecclesiastical processes, is conducted by the apparitor or officer of the court in all cases where the party to be cited resides within ten miles of the registry. If, however, the residence of such party exceeds that distance, the process may be confided to any literate person. The service having been effected according to law, a certificate is endorsed on the process, with an affidavit in verification of it.

This certificate and affidavit have been given at p. 153.

The citation or decree is made returnable on the third day, if the party cited resides in London; or on the sixth, if he resides in any other part of England. If a person whom it is required to cite in a testamentary suit resides in another diocese or province, or in Ireland, Scotland, or any country not subject to the Anglican ecclesiastical jurisdiction, letters of request are issued to the authorities in either country, praying

that their aid will be given to effect a citation in the terms therein mentioned.

The letters of request, in the case of the party residing in Scotland, are addressed to the civil power and are in the following form :—

*Letters of Request.*

William, by Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, to our well-beloved in Christ, the Worshipful the Magistrate of the city of Edinburgh and counties of Edinburgh and Nairn, in North Britain, jointly and severally, greeting :

Whereas it hath been alleged before the Worshipful John Daubeney, Doctor of Laws, Sarrogate of the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, on the part and behalf of Boyd Miller and James Dunlop, that Patrick Hart, &c. &c., died on the 5th day of July last, a widower, without a child or parent, having, whilst living, and at the time of his death, goods, &c., having made his last will and testament in writing, with a codicil thereto, the said will bearing date the 19th day of June, in the present year 1835, and the said codicil being without date, and in his said will appointed the said Boyd Miller and James Dunlop executors, and that the testator left surviving him, and, &c., his natural and lawful brothers and sisters and only next of kin, and also, &c., his lawful nephew and nieces, together the only persons who would have been entitled in distribution of his personal estate and effects in case he

had died intestate. And whereas it was further alleged that the said Boyd Miller and James Dunlop are about to propound the validity of the said will and codicil, in order to obtain the judgment of our said Prerogative Court therein; and whereas it was further alleged that the said Thomas Hart, who resides at , is a lunatic under curation, and that Richard Montgomery, the lord-treasurer's remembrancer, &c., is the curator lawfully appointed of the said Thomas Hart, (as by an affidavit duly made and sworn to by Boyd Miller, exhibited to the said surrogate, and left in the registry of our said court, relation being thereunto had will appear.) And whereas the surrogate aforesaid, rightly and duly proceeding in the premises, hath, at the petition of the proctor of the said Boyd Miller and James Dunlop, decreed the said, &c., &c., to be cited, intimated, and called to appear in judgment, on the day, at the time and place, and to the effect and purpose hereinafter mentioned, justice so requiring; and whereas the said Richard Montgomery, the lawful curator as aforesaid of the said Thomas Hart, and the said Jane Hart, and, &c., now reside in the city of Edinburgh, &c., and within your respective jurisdictions, and cannot therefore be cited legally by our authority to appear before our master, keeper, or commissary aforesaid; therefore we, in aid of the law and justice, and under promise of the like favour, request that you will, by your authority, be pleased to cite, or cause to be cited, the said Thomas Hart, by causing these presents, under seal, to be shewn to the said Richard Montgomery, his curator lawfully assigned, and a copy hereof to be left with him and the said Jane Hart and Catherine Hart, by causing

these presents, under seal, to be shewn to them, and a copy hereof to be left with each of them, to appear personally, or by their respective proctors or proctor, duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate, &c., and place of judicature, &c., there, on the tenth day after the execution of these presents, if the same be a general session, bye-day, &c., otherwise, &c., of our said court then next ensuing, and on every other court-day of our said court then next ensuing, at the hour of ten in the forenoon of the said day, and every of them, and there abide, if occasion require, during the sitting of the said court, then and there to see and hear all and every the judicial acts, matters, and things needful and by law required to be done in and about the premises, and until a definitive sentence in writing shall be read and signed, promulged and given, or until a final interlocutory decree shall be made and interposed in the said cause or business, if they or either of them shall think it for their advantage to do so, and further to do and receive, &c., at the promotion of the said Boyd Miller, &c.; and also that you will be pleased to intimate, or cause it to be intimated, to the said Richard Montgomery, on behalf of the said Thomas Hart, and the said, &c., to whom we do so intimate by the tenor of these presents, that if they, some, or one of them do not appear on the aforesaid respective days, and on every other court-day of our said court, at the time, &c., our master, &c., will proceed to do and expedite all and every the judicial acts, matters, and things needful and by law required to be done and expedited in and about the premises, and to

read, sign, promulge, and give a definitive sentence in writing, or make and interpose a final interlocutory decree in the said cause or business, the absence or rather contumacy of the said Thomas Hart or Richard Montgomery, his curator, &c., so cited and intimated, in any wise notwithstanding; and that you will be pleased, &c., together with these presents; and we, on our part, shall be always ready to return the like favour when thereunto required.

Dated, &c.

These letters of request are served directly by the mandatory, in the same manner as a citation or decree.

The letters of request, where the party resides in another diocese or province, or in Ireland, are to the ecclesiastical Ordinary, and may be illustrated by the following form:—

### *Letters of Request.*

William, by Divine Providence, Archbishop of Canterbury, &c., to the Right Reverend Hugh, by Divine permission, Lord Bishop of Carlisle, your vicar-general or official principal, his surrogate, or any other competent judge in this behalf, greeting:

Letters of request to the Ordinary of another province.

Whereas the Right Honourable Sir Herbert Jenner Fust, &c., rightly and duly proceeding, hath, at the petition of the proctor of George Tayler, Esquire, alleging that Oxley Tilson, late of Coleman Street, in the city of London, Solicitor, deceased, (having whilst living, &c.) died on the 18th day of August, 1843, having first made and duly executed his last will and testament in

writing, bearing date the 2nd day of April, 1842, and thereof appointed the said George Tayler and Henry Lee, executors, and Elizabeth Collett Dalglish, spinster, residuary legatee; and further alleging that the said deceased died a widower, without child or father, leaving him surviving Maria Tilson, widow, his natural and lawful mother, and next of kin, and Thomas Tilson, Charles Tilson, George Tilson, and Maria Lee, wife of Henry Lee, his natural and lawful brothers and sister, and Eliza Shadbolt, spinster, his lawful niece, respectively, the only persons who would have been entitled in distribution to his personal estate and effects, in case he had died intestate, decreed the said Charles Tilson to be cited, intimated, and called to appear in judgment on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, (justice so requiring :) and whereas the said Charles Tilson now resides in the county of Cumberland, and within your jurisdiction, and cannot be legally cited by our authority to the effect hereinafter mentioned: therefore we, in aid of law and justice, and under promise of the like favour when thereunto required, request that you will, by your authority, be pleased to cite, or cause to be cited, the said Charles Tilson to appear personally or by his proctor, duly constituted, before our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the first session of Hilary Term, to wit, the 2nd day of January, in the year 1844, and also on every other court-day, then and there to see and hear the said will propounded and proved by wit-

nesses in solemn form of law, and all and every other the judicial acts, measures, and things needful and by law required to be done and expedited in and about the premises, until a definitive sentence in writing shall be read, signed, promulged, and given, or a final interlocutory order or decree shall be made and interposed in the premises, if he shall think it for his interest so to do; and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said George Tayler; and moreover we request that you will be pleased to intimate, or cause to be intimated, to the said Charles Tilson, that if he does not appear, on the day, at the time and place, to the effect, and in manner and form aforesaid, or appearing does not shew good and sufficient cause, concludent in law to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed and will proceed to see and hear the said last will and testament of the said deceased propounded, and to do all and every other the judicial acts, measures, and things needful and by law required to be done and expedited in and about the premises, and to sign, promulge, and give a definitive sentence in writing, or to make and interpose a final interlocutory order or decree therein, the absence or rather contumacy of the said Charles Tilson, so cited and intimated, in any wise notwithstanding; and what you shall do or cause to be done in the premises you will be pleased to certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with your proceedings thereon, and we, on our part, shall be

always ready to return the like favour when thereunto required.

Dated, &c.

The last-mentioned letters of request are not served directly, but must be presented to the Official or Commissary, or to his surrogate, and being accepted by him, a decree is directed to pass the seal of his court, to the tenor of the letters of request.

This is termed a decree by virtue of letters of request, and may be illustrated thus :—

*Decree by virtue of Letters of Request.*

Decree by  
virtue of let-  
ters of re-  
quest.

Charles James, by Divine permission, Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting:

Whereas we have lately received letters of request from the Right Reverend Father in God, Charles Richard, by Divine permission, Lord Bishop of Winchester, of the tenor following, to wit :—Charles Richard, by Divine permission, Bishop of Winchester, to the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, &c., (*here follow the letters of request ;*) and whereas the Worshipful John Daubeney, Doctor of Laws, Surrogate of the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General and Official Principal of our Consistorial and Episcopal Court of London aforesaid, in aid of justice, at the petition of the proctor of the said Isabella P——, hath accepted the said letters of request, and hath decreed to proceed according to



the tenor thereof, (justice so requiring :) we do therefore hereby authorize, empower, and strictly charge and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said John P——, personally, or otherwise by all lawful ways, means, and methods whereby these presents may most likely come to his knowledge, to appear personally, or by his proctor, duly constituted, before the Worshipful John Sayer Poulter, Bachelor of Laws, the Commissary of the Right Reverend Father in God, Charles Richard, by Divine permission, Lord Bishop of Winchester, in and for the parts of Surrey, lawfully constituted, his surrogate, or any other competent judge in this behalf, in the Parish Church of Saint Saviour, Southwark, in the said county of Surrey, and place of judicature there, on the third day after the service hereof, if it be a court-day of the said court, otherwise on the court-day then next ensuing, at the hour of twelve o'clock in the day, being the usual and accustomed hour of hearing causes and doing justice there, and there to abide, if occasion require, during the sitting of the said court, then and there to answer unto the aforesaid Isabella P——, his lawful wife, in the aforesaid cause of restitution of conjugal rights, and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Isabella P——; and what you shall do or cause to be done in the premises you shall duly certify our vicar-general, &c.

Dated at London, &c.

If the party sought to be cited resides abroad, the service of the process, (as frequently happens in the

Prerogative Court,) is made on the Royal Exchange, and the time for his appearance is fixed at thirty days' lapse.

The citation or decree having been personally served upon the party named therein, is returned into court on the general session or other court-day on or succeeding the day of the return, accompanied by the proxy of the promoter; and an appearance being then or afterwards given by or on behalf of the party cited, the various steps enumerated in the preceding pages, as peculiar to each cause, are taken on both sides.

The libel or allegation having been admitted to proof, either by consent or the order of the judge, the personal answers of the other party to the plea, if not criminatory, are ordered to be filed within a reasonable time.

The following may serve as a form of answers; they are subscribed by the respondent, and their truth is acknowledged by him before a surrogate of the court, after taking an oath that he will faithfully answer to the libel or allegation in question :—

### *Personal Answers.*

Personal answers on oath.

In the Prerogative Court of Canterbury.

**FREEMAN** *against* **DOBBS** and **OTHERS.**

Pitcher.

Thomas.

In the goods of Daniel Fisher, deceased.

The personal answers of Mary Ann Dobbs, wife of Thomas Dobbs, Jane Edwards, wife of Joseph Edwards, and Hannah Kent, wife of John Kent, the natural and lawful sisters and legatees named in the true and original last will and testament, bearing date

the 27th day of February, in the year 1834, of Daniel Fisher, late of Edgbaston, in the county of Warwick, the deceased in this cause, to the several positions or articles of a certain allegation, bearing date the first session of Michaelmas Term, to wit, Monday, the 7th day of November, 1842, given in and admitted in this cause on the part and behalf of Thomas Freeman, one of the pretended executors named in the pretended last will and testament of the said deceased, bearing date the 23rd day of May, 1842, and propounded on his behalf in this cause, made and given upon, and by virtue of the corporal oaths of the said Mary Ann Dobbs, wife of Thomas Dobbs, Jane Edwards, wife of Joseph Edwards, and Hannah Kent, wife of John Kent, and the said Thomas Dobbs, Joseph Edwards, and John Kent follow, to wit.

To the first position or article of the said allegation, First. these respondents and their said respective husbands answering, say they admit that the articulate Daniel Fisher, the deceased in this cause, was of the age of twenty-one years and upwards at the time articulate, but they disbelieve and thereby deny that the said deceased, either at the time articulate, or at any other time, whilst of sound and disposing mind, memory, and understanding, gave any directions and instructions for the making the pretended will articulate; or that, pursuant to any such directions and instructions, the said pretended will was drawn up and reduced into writing. Respondents and their said respective husbands further answering, say they disbelieve, and therefore deny, that after the said pretended will had been in fact drawn up and reduced into writing, the same was read all over audibly and distinctly, or was at all read over, either to

or by the said deceased; and they further disbelieve, and therefore deny, that the said deceased well or at all knew or understood the contents thereof, or liked and approved of the same. Respondents and their said husbands further answering, say they admit that the said deceased did, in fact, write his name at the foot or end of the said pretended will, and that he might have so done on the 23rd day of the month of May last past, which they severally admit is the day of the date thereof, but they respectively know not to answer as to whether the said pretended will was or was not so in fact signed by the said deceased, as it purports to have been, in the presence of the three persons, whose names appear subscribed thereto, present at the same time. These respondents and their said husbands further answering, say they disbelieve, and therefore deny, that the said deceased, by the said pretended will, appointed the articulate Thomas Hately Hawkes, Thomas Freeman, and his, the deceased's wife, Mary Fisher, executors, or that he gave, willed, bequeathed, disposed, and did in all things, or in any respect, as in the said pretended will is contained, or that at the date of the said pretended will articulate, he, the said deceased, was of perfect, sound, and disposing mind, memory, and understanding, or was fully or at all capable of making and executing his will, or of doing any other serious or rational act of that or the like nature requiring thought, judgment, or reflection; and further, or otherwise, they deny the said position or article to be true.

Second.

To the second position or article of the said allegation, these respondents and their said husbands answering, say that they respectively admit and confess what they have hereinbefore admitted and confessed, and

they disbelieve and deny what they have hereinbefore disbelieved and denied.

MARY ANN DOBBS.

THOMAS DOBBS.

JANE EDWARDS.

JOSEPH EDWARDS.

HANNAH KENT.

JOHN KENT.

On the 1st day of December, 1842, the said Mary Ann Dobbs, Thomas Dobbs, Jane Edwards, Joseph Edwards, Hannah Kent, and John Kent were severally duly sworn to the truth of the above personal answers, by virtue of the annexed commission, before me.

RANN KENNEDY,

Incumbent of Saint Paul's, in the parish of  
Birmingham, in the county of Warwick.

In the presence of

WILLIAM LEYLAND, of Russell Street,  
in the parish of Birmingham, in the  
county of Warwick, resident house-  
holder.

JOHN WEBB, of 24, Waterloo Street, in  
the parish of Birmingham, in the county  
of Warwick, resident householder.

If the respondent resides at a distance of ten miles from the registry, he may be sworn to his answers, under a commission, which empowers the officiating clergyman of his parish to administer the necessary oath.

Should the party whose answers are required be reluctant to give them, in order to compel his obedience recourse must be had to a decree of the following tenor:—

*Decree for Answers.*

Decree for  
answers.

Charles James, by Divine Permission, Bishop of London, &c.

Whereas the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General, &c., rightly and duly proceeding in a certain cause of restitution of conjugal rights, promoted and brought by A. B., wife of C. D., of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, and our diocese of London, against the said C. D., her lawful husband, of the same parish, county, and diocese, hath, at the petition of the proctor of the said A. B., alleging that his said party would be better relieved by the personal answers of the said C. D. than from those of his proctor exercising for him in this behalf, decreed the said C. D. to be cited to appear on the day, at the time and place, and to the effect hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said C. D. to appear personally before our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, &c., on the sixth day after he shall have been served with these presents, if it be a general session, &c., at the hour of the sitting of the court, and there to abide during its continuance, then and there to give in his sworn personal answers to the several positions or articles of a certain libel, with exhibits thereto annexed, bearing date the fourth session of Trinity Term, to wit, &c.,

given and admitted in the said cause on the part and behalf of the said A. B., and further to do, &c.

If the party, after the service, will not comply with the mandate, he may, at the instance of the other side, be pronounced in contempt, and signified according to law.

When the answers are given in, the proctor will proceed to the proof of the libel or allegation. On the admission of the latter, a term probatory, or period of proof, is assigned to him, and within such period he is bound to procure all his evidence, unless cause can be satisfactorily shewn for renewing the term; or his opponent, as will be afterwards explained, shall give him the opportunity of participating in his own. This term probatory, unless specifically assigned by the judge, is determined in its duration by an Order of court.

Evidence is taken in the following manner:—

The proctor, whose plea is to be substantiated, produces his witnesses, in succession, before a surrogate, who administers the customary oath to such witness, and monishes him to attend to undergo his examination whenever he shall be required for such purpose. This is done in the presence of the other proctor.

Should the witness sought to be examined refuse to attend for such purpose, unless by compulsion, his attendance is enforced by a compulsory.

This process is in the following form:—

*Compulsory against a Witness.*

Compulsory  
against a wit-  
ness.

George, by Divine Permission, Lord Bishop of Roches-  
ter, &c.

Whereas the Reverend John Smallman Masters, Clerk, Surrogate of the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General, &c., rightly and duly proceeding in a certain cause or business of divorce or separation from bed, board, and mutual cohabitation, by reason of cruelty and adultery, now depending before him in judgment, between Sophia I——, wife of H—— I—— B—— I——, the party promoting the said cause or business on the one part, and the said H—— I—— B—— I——, of the parish of Lewisham, in the county of Kent, and our diocese, and the party against whom the said cause or business is promoted on the other part, hath, at the petition of the proctor of the said Sophia I——, alleging that Sarah D——, spinster, was and is a necessary witness to prove the contents of a certain libel, with an exhibit thereto annexed, given in and admitted in the said cause on the part and behalf of the said Sophia I——, who, having been offered her necessary expenses, hath refused, and still does refuse, to attend and give her testimony in the said cause, unless by law compelled thereto, decreed the said Sarah D—— to be cited to appear on the day, at the time and place, and for the purposes hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize and empower and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Sarah D——, spinster, to appear personally before our



vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, in the parish church of East Greenwich, in the county of Kent aforesaid, and place of judicature there, on the third day after service of these presents, if it shall be a court-day, otherwise on the court-day then next following, at the usual and accustomed hours of hearing causes and doing justice there, then and there to abide, if occasion require, during the sitting of the court, then and there to take the oath by a witness usually taken, and to testify the truth of what she knows in this behalf; and further, &c.

Dated at London, &c.

The disobedience of a witness after the service of a compulsory is vindicated in the same manner, as in the case of a refusal of the party in the cause to give in his answers.

The evidence in chief of the witness is taken by one of the examiners of the court in secret; and the same course is adopted in regard to the cross-examination on the interrogatories of the other side.

The form of a deposition is as follows :—

### *Deposition of a Witness.*

**MACKENZIE against YEO.**

On the allegation brought in by F. Clarkson,

April 1, 1840.

George Lake, servant to Mr. Richard Evans, of Fore Street, in the city of Exeter, druggist, aged nineteen years on the 20th of December last, a witness, produced and sworn.

To the first article the witness deposing on his oath, saith,—I am a native of Barnstaple, and always lived

Deposition  
of a witness.

there up to the 14th of December last, when I went to Exeter, where I have since lived; I knew Mr. Barbor, the deceased, in this cause, (George Acland Barbor,) by sight, almost as long as I can remember any thing; I never spoke to him unless on the only time I ever was in company with him, which was when he signed the codicil, and I do not know that I spoke to him then. At the time of which I am about to depose, I was in the service of Messrs. Cook, druggists, in Barnstaple, and I had frequently seen my fellow witness, Mr. Mackenzie, there. At the time I knew Miss Melton now Mrs. Mackenzie, and party in this cause, by sight, but no more. One Friday, it was market-day, in the summer, two years ago, come next June or July, I was going up the High-street early in the afternoon, I think; I remember that I had not been to dinner; Mr. Mackenzie tapped on the window to me as I was passing on the opposite side of the street; he was in Miss Melton's front room, up one pair; I stopped; he beckoned me; I went to the door; he came down to me, opened the door, and asked me to walk up-stairs, that he wanted me for something; I followed him up into the room; Miss Melton was sitting at a table, writing; Mr. Barbor was standing behind her, looking over her shoulder; she was not copying any other paper; it appeared to me that he was telling her what to say, but I did not hear him say any thing to her distinctly; Mr. Mackenzie said to Mr. Barbor, "Here is a young man I know something of, have you any objection to his being a witness?" To this Mr. Barbor said, "No, not in the least." Miss Melton was writing all the time this passed, Mr. Barbor still being behind her, looking over her, seemed to be telling her what to write, but not so that I heard distinctly what he spoke. I heard

nothing more till the paper was finished by her; that was not more than about two or three minutes; I was not there altogether more than about five minutes, I should say. The paper was then read over by Miss Melton aloud; I did not hear any one tell her to read it; she read it of her own will, as I believe; she was sitting when she wrote, and standing while she read the paper which was bequeathing five thousand pounds to her; the paper was afterwards read over by Mr. Barbor, not so loud or distinctly as by her; I heard some words, but not all, without making any observation as to its contents; not a word was said about them by any one; Mr. Barbor took the pen and wrote his name; he did that as he stood; I did not see him sit the while I stood there; Mr. Mackenzie then signed his name, and I signed mine; one or both of them, I think both, said to me, "Now, young man," and so, stepping forward, I wrote my name under that of Mr. Mackenzie; when I had so done, Mr. Barbor gave me half-a-sovereign, and bade me say nothing; his words, I think, were, "Young man, I hope you will keep this to yourself, and say nothing about it to any one, as I do not wish it to be known." I thanked him, and left the room, and that is all that I know of the business. The deceased, Mr. Barbor, was of very sound mind, memory, and understanding at the time, as I believe; I have no reason whatever to doubt that, or that he knew full well what he was then doing, and was capable of making and executing a codicil to his will, and of doing any act of the like nature, requiring thought, judgment, and reflection; the writing marked (A) now shown to me, (the codicil in question in the cause,) is that which was so signed by the deceased in

my presence and that of my fellow witness, and witnessed by us in his presence, and in the presence of each other, as I have deposed, after it had been twice read over in my presence ; also, as I have before deposed, the name, "G. A. Barbor," subscribed to it, was written by the deceased in my presence, so was the name "T. D. Mackenzie;" the other name, "George Lake," is my own, and my signature, then added, as I have said ; there is one change in it, it was a whole sheet then, and it is but half a one now ; I did not see the sheet spread open, but I saw enough to know that it was a whole sheet, and that there was writing, though I could not say of what kind, on the other half sheet ; I saw no other paper there that day but the one of which I have now deposed ; that is all I can say ; when Mr. Barbor signed the paper, as I have said, he did not make any remark at all, he merely put his name, without saying a word ; Miss Melton did not speak while I was there, only read the codicil every word the same as it now is, to the best of my recollection and belief ; I remember it enough to say that.

GEORGE LAKE.

*The same Witness examined on the Interrogatories.*

First.

The witness was strictly admonished as directed.

Second.

It was done as directed ; I have been supported, since the month of March, 1838, by my own industry ; the first part of the time I was in the service of the Messrs. Cook, in this town ; latterly in that of Mr. Evans, at Exeter ; there was an interval of about two months between my leaving Mr. Cook and going to Mr. Evans ; at the time I lived with Mr. Cook I had but two shillings and sixpence a week besides my

meat ; I could not clothe myself for that, but at that time I was living with my mother ; I left that situation because the wages were not enough ; now I have ten shillings a-week, and find myself in everything ; it is too little, but I do not like to say anything about it ; it was not so much as two months that I was out of place, it was little more than one.

I have not had a communication of any kind with Third  
Mr. Mackenzie since his examination ; I was entirely ignorant of the nature of any questions now about to be put to me ; no communication has been made to me, no hint has been given to me, as to any point on which it was thought likely that I should be examined.

Mr. Mackenzie brought me from Exeter ; he did not Fourth.  
actually bring me, for we did not come together, but it was he who arranged for my coming ; he did not say much to me ; he came into the shop in Exeter, either Monday or Tuesday night last week ; he said that very likely he should want me on Saturday to go to Barnstaple ; I said that I must first get my master's consent ; he told me that the codicil was to be proved on Monday ; I knew what he meant, because he had spoken to me some time back, telling me he should want me about that business ; Mr. Mackenzie first spoke to me upon it since Mr. Barbor's death, I should think it may be three months ago ; he asked me if I recollected once signing a paper for him ? I said, " Yes, I did ;" he said, " I suppose you are aware that Mr. Barbor is dead, and that the paper will come to be proved in a short time ;" when, he said, I should be required as a witness ; I do not know that anything more passed then. Mr. Law called on me next ; he is an attorney of this place ; that might be about a fort-

night after Mr. Mackenzie had been with me; he came into Mr. Evans's shop, and asked if there was a lad there of the name of George Lake; I chanced to have come forward; I told him I was the person; he looked at me, and asked me if I knew him; I told him, yes, I did; and told him who he was; he asked me if I ever knew Mr. Barbor, of Fremington; I said, yes, I did; he asked me if I ever was in company with him; I told him, yes, once, and on my telling him where, he said, "Oh, then you are the young man I want, can I take down your evidence?" I said, "If you please, sir;" he came inside the counter, and began to write at a little desk; he first asked me how old I was, how long I had been at Exeter, where I lived before, how long since I left Barnstaple; all which I answered; then he asked me if I knew Mr. Mackenzie, and had I seen him lately; I told him, yes; he asked me the nature of the business on which I was in company with Mr. Barbor; I told him it was about bequeathing a sum of five thousand pounds to Miss Melton; he asked me what day it was; I told him, Friday; he asked me then what had passed, and I told him; I gave him an account of it, just the same as now; he asked me if I could recollect anything about the room; what kind of room it was, what the furniture was? I could not tell that, for I had been there but a short time, and paid no attention to it; I do not remember what else he asked; when I had answered all his questions, and which he wrote down, as I imagine, but he did not read it to me, he thanked me and went away. The next person I saw was young Mr. Gribble, of Barnstaple; he asked me if I had seen Mr. Law, if Mr. Law had been to call upon me; I told him, yes; he asked me what ques-

tions Mr. Law had put to me; I told him as many as I could recollect, but he did not write down anything, as I think; then he went over all the particulars of the matter with me, and I told him the same; he wrote down that part of what I had said, read it over to me, and asked me to sign it, which I did; then he went away, and I have seen no one else on the subject, until Mr. Mackenzie called, and told me how he should want me to come to Barnstaple, as I have already deposed; I have seen Mrs. Mackenzie once or twice to speak to her; one evening Mr. Mackenzie met me, and asked me to come up when I had shut shop, for he wanted to speak to me; I went; Mrs. Mackenzie was there; he told me that he had just had a letter from Mr. Gribble, that the business of the codicil was coming on, and I should have to go with him, but he could not say where—it might be to London, it might be to Barnstaple; Mrs. Mackenzie said, “I suppose, George, you would just as soon go to Barnstaple as to London, because you would have the opportunity of seeing your mother;” I said, yes; I do not know that anything else passed; I had a glass of spirits and water while I was there; I have seen her walking in Exeter with Mr. Mackenzie, but if I have spoken to her again, it was not upon this business; I have had no other meetings, or consultations, or conferences, as interrogate. &c., &c.

GEORGE LAKE.

On the 1st day of April, 1840, the said George Lake was repeated to this deposition, and acknowledged his subscription thereto, before me,

HENRY LUXMOORE, Commissioner.

In the presence of

CHARLES BOWDLER, Acty. Assd.

The following will also afford examples of interrogatories:—

*Interrogatories to a Witness.*

Interrogatories to a witness.

Prerogative Court.

BURGOYNE *against* SHOWLER and OTHERS.

Fielder.

Buckton.

In the goods of James Chalcraft, deceased.

Interrogatories ministered and to be administered on the part and behalf of Mary Ann Showler, (wife of Robert Showler,) the natural and lawful sister and only next of kin, and the only person entitled in distribution to the personal estate and effects of James Chalcraft, late of No. 13, Cooke's Court, Carey Street, in the county of Middlesex, the deceased in this cause, to all and every the witnesses produced, sworn, and examined, or to be produced, sworn, and examined, on a certain allegation, bearing date on the bye-day after Hilary Term, to wit, Thursday, the 22nd day of February, 1844, given in and admitted in this cause, on the part and behalf of Thomas Burgoyne, the sole executor named in the pretended last will and testament of the said deceased, bearing date, as pretended, the 25th day of September, 1839, and pleaded and propounded in this cause, on the part and behalf of the said Thomas Burgoyne, follow, to wit:—

First.

Ask each witness—At whose request do you attend to be examined as a witness in this cause? When, where, and by whom were you applied to, and in whose presence, so to attend, and what passed on the occasion? How often, when, where, and in whose presence, and to what precise effect, have you conversed with the



producent, or any one, and whom, on his behalf, since the death of the deceased, in respect to the pretended will in question in this cause, or any and what other matters relative thereto or connected therewith?

Ask Howton—Are you not, and have you not been **Second.** for some time, and how long past, a clerk in the employ of the producent or his firm, assisting him or them in some and what department of his or their business? In which room, at the said Messrs. Burgoynes, at No. 160, Oxford Street, did you sit of evenings? Was it not in one or other of two inner rooms to the outer room or clerks' office, distant or apart therefrom? Was it not distant or apart therefrom at least thirty feet? Was there not a hall, and of what dimensions, and was there not also a passage, and of what length, between the two? Was there not also a partition in the outer room or clerks' office, with a door in it facing a window opening into the hall? Could any part of the nearest even of such two inner rooms be seen from the said outer room or clerks' office, unless the door in the said partition, facing such window in such inner room door, both chanced to be open at the time? Could the place, in such nearest even of the two inner rooms, where you sat, be seen from your fellow-witness, Mr. Sibley's, seat, or such outer room or clerks' office, even if both the said doors chanced so to be open? Could you, from either, (the nearest even,) of the said two inner rooms, and with but the said doors open, see the place, in the outer room or clerks' office, where your fellow-witness, Sibley, sat of evenings? Was it not only in the evening, and at what hour in the evening, that the said Sibley was in the habit of attending, or indeed ever attended, at the office of the said Messrs.

Burgoyne? At what hour in the evening were you in the habit of leaving the same? Was not the furthest of the said inner rooms, and also the tax-office in which you sometimes sat, at \_\_\_\_\_, interrogate, (both of them,) quite \_\_\_\_\_ from any part of the room, outer room, or clerks' office?

Third.

Ask Howton—Have you not said that the deceased brought his will (to wit, the paper writing propounded as such,) to you, the witness, in your room at Messrs. Burgoynes, ready signed for you to witness or attest, and which you then did, no one else being present at the time; and, upon your oath, is such not the fact? or, on the contrary, can or will you swear that your fellow-witness, Sibley, was present when the deceased so brought the said will to you in your room, and you so attested the same? if yea, be precise in stating to the examiner how it is that you now venture to depose contrary (is such not the fact?) to your original statement as to that particular? upon your oath, have you any, and if yea, what reason for believing that your fellow-witness, Sibley, was present, (and, if yea, how present,) at the time and upon the occasion of the deceased bringing the will in question to you, and getting you to attest it in manner as pre-interrogate? did your said fellow-witness attest the will in your presence? if nay, was the signature thereto already upon the said will, when the deceased so brought it to you to attest, or was it placed there after you had attested, and he the deceased had taken away the same.

Fourth.

Ask Sibley—Are you not, and have you not been for some time, and how long past, in the habit of attending, (of evenings only,) and at what hour, as an occasional writer or assistant at or in the office of Messrs. Bur-

goyne, (of No. 160, Oxford Street, of which firm the producent is a partner? And at such hour of evenings, was your fellow-witness, Howton, in the habit of leaving the said office? In which room, at Messrs. Burgoyne's do you sit during such your attendance? Is it not in an outer room, known as the clerks' office, and which was also where the deceased sat? In which room, at the said Messrs. Burgoyne's, did your fellow-witness, Howton, sit? Did he not sit in either one or other of two inner rooms, or what is called the tax-office? Is not the furthest of such inner rooms, and also the tax-office, quite apart from any of the said outer room or clerks' office? How far? Was it not at least thirty feet distant or apart therefrom? Was there not a hall, of considerable and what dimensions, and also a passage, of some and what length, between the two? Was there also not a partition in such outer room or clerks' office, with a door in it? Was there not a window, opening in the hall, facing such door? Could any part of the nearest even of such inner rooms be seen from the said outer room or clerks' office, unless the door in the said partition, facing such window, and also such inner-room door both chanced to be open at the time? And could the place, in such nearest even of the two inner rooms, where your fellow-witness, Howton, sat, even then be seen from your place, where you sat in the said outer room or clerks' office, be seen from either, (the nearest even,) of the two inner rooms, and with both doors open, (that is, from any part of the nearest of such two inner rooms,) as you know or believe?

Ask Sibley—Have you not said or stated that the Fifth. deceased brought his will, (to wit, the paper writing

propounded as such,) to you in the outer room, or clerks' office, where you sat during one of your evening attendances at [Messrs. Burgoynes, pre-interrogate, and there signed it in your presence, and that you then and there attested it in his presence, no one else being present at the time; and, upon your oath, is such not the fact? Or, on the contrary, can and will you swear that your fellow-witness, Howton, was also present when the deceased so signed the will in your presence, and you attested the same? If yea, be precise in stating to the examiner how it is that you now venture to depose contrary (is such not the fact?) to your original statement as to that particular? Upon your oath, have you any, and, if yea, what reason for believing that your fellow-witness, Howton, was present, (and, if yea, how present,) at the time, and upon the occasion of the deceased signing the said will in your presence, and of your attesting the same? Did your said fellow-witness attest the said will in your presence? If nay, when and where, and under what circumstances, as you know, or have any and what reason to believe, did he attest the same? If the deceased acknowledged his signature at the foot of the will to the said Howton, and he thereupon attested it; upon your oath, were you also present, (and, if yea, how present,) at the time of such his acknowledgment of the said signature to the said Howton?

Sixth.

Let the exhibit marked No. 1, hereto annexed, be produced to each of the witnesses, and then ask the witness, is not the same a true and correct plan of the offices, &c., at Messrs. Burgoynes, No. 160, Oxford Street, mentioned in the preceding interrogatories? Is not the room marked A, that called in the interro-

gatories, the furthest of the two inner rooms? that marked B the nearest of the two, (viz., to the outer room or clerks' office respectively?) That marked C the tax-office; that marked D the outer room, or clerks' office? Are not the seats marked out as those of the deceased, your fellow-witness, and you, the witness, respectively, in those rooms so correctly marked?

Ask Howton and Sibley—Had the alterations, now appearing respectively on the first and second sides of the said will, or either of them, been made thereon prior to your attestation thereof, as you know or believe? Have you not said, (and is it not the fact,) that you have no knowledge and can form no belief in that respect? Seventh.

If the witness, after being produced and sworn, declines to undergo his examination, his attendance is compelled by the following monition:—

*Monition to undergo Examination.*

William, by Divine Providence, &c.

Whereas the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary, &c., rightly and duly proceeding in a certain cause of proving, in solemn form of law, the true and original last will and testament, and codicil thereto, of James Northwood, late of Molyneux Street, in the parish of Saint Marylebone, in the county of Middlesex, Esquire, deceased, bearing date respectively the 23rd day of July, in the year 1840, promoted by George Northwood, the lawful nephew of the said deceased, against William Wellstead, one of the exe-

Monition to  
undergo exa-  
mination.

cutors named in the said will now depending in judgment before him, hath, at the petition of the proctor of the said William Wellstead, alleging that Alfred Florance, who has been produced and sworn as a witness in the said cause, on the part and behalf of the said William Wellstead, hath refused, and still doth refuse, to attend to undergo his examination on a certain allegation, given in and admitted on the part and behalf of the said William Wellstead, unless by law compelled thereto, decreed the said Alfred Florance to be monished and cited to appear in the manner and to the effect hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish and cite, or cause to be monished and cited, the said Alfred Florance to appear personally before our master, keeper, or commissary aforesaid, &c., on the first session of Michaelmas Term, to wit, Friday, the 7th day of November instant, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to undergo his examination upon the said allegation, given in and admitted on the part and behalf of the said William Wellstead, under pain of the law and contempt thereof. And what you shall do, &c.

Dated at London, &c.

In the same manner, if a witness, after undergoing his examination in chief only, has refused to attend to undergo a cross-examination, the latter is enforced by a monition of the following tenor:—

*Monition to undergo Cross-examination.*

William, by Divine Providence, &c.

Monition to  
undergo  
cross-exami-  
nation.

Whereas the Right Honourable Sir Herbert Jenner Fust, &c., hath, at the petition of the proctor of the said William Wellstead, alleging that John Huish Webber, who had been produced and sworn as a witness in the said cause, on the part and behalf of William Wellstead, having undergone his examination in chief upon a certain allegation given in and admitted on the part and behalf of the said William Wellstead, hath refused, and still doth refuse, to attend and undergo his examination upon interrogatories to be administered on behalf of the said George Northwood, unless by law compelled thereto, decreed the said John Huish Webber to be monished and cited to appear in the manner and to the effect hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish and cite, or cause to be cited, the said John Huish Webber to appear personally before our master, keeper, or commissary aforesaid, &c., then and there to undergo his examination upon the said interrogatories, under pain of the law and contempt thereof, &c.

After the witness has finished his examination, whether in chief or on interrogatories, it is read to and subscribed by him, and he is then repeated to it before a surrogate. The repetition or acknowledgment is made in the following manner: the examiner conducts the witness before a surrogate; and, in the

presence of the latter, the witness, in answer to the question of the examiner, affirms that the names subscribed to the deposition are of his own handwriting, that he knows the contents of such deposition, and declares the same to be true, by virtue of the oath which he has before taken.

The deposition is now a complete instrument.

This repetition of the witness is made immediately on the examination being finished, in all cases where interrogatories have been administered to the witness, or where the adverse party has instructed the examiner that he will not cross-examine. In those cases, however, where the suit is prosecuted *in pœnam contumaciae* of an absent party, or where the party having no proctor in the suit, has neither filed a set of interrogatories in the registry, nor given express instructions to the examiner, that he will not administer any, the witness cannot be repeated until forty-eight hours, to be calculated from the time of the production of the witness, have elapsed (a).

The foregoing remarks apply to the case of a witness produced and examined in London. If, however, the witnesses reside at a distance of ten miles or more from that city, but still, however, within the province of Canterbury, and will not attend there for the purpose of being examined, or it is thought advisable to examine them on the spot, a commission may be extracted for such purpose.

The commission is directed to clergymen residing in or near the parish in which it is to be opened. Two commissioners are named by the party who extracts the

(a) Vide Orders of Court.



commission, and it is competent to the other side also to name one or two more, but the privilege is seldom exercised. The Commissioners are empowered to assume one of the Examiners to take the evidence on their behalf, the province of the Commissioners being solely judicial. It is usual, however, for one Commissioner only to actually take part in the execution of the commission.

The proctor, on either side, may appoint a substitute to execute, or attend the execution, on his behalf.

### *Substitution.*

Whereas there is now depending undetermined in Substitution, judgment, in the Prerogative Court of Canterbury, a certain cause or business of proving in solemn form of law, by good and sufficient witnesses, the pretended last will and testament of Peter Rainier, formerly of the Albany, Piccadilly, in the city of Westminster, afterwards of Capecure, Boulogne-sur-Mer, in the kingdom of France, but late of Lower Grosvenor Street, in the parish of Saint George, Hanover Square, in the county of Middlesex, Esquire, deceased, (the same bearing date on or about the 17th day of September, 1837, promoted by Ellen Elwyn, wife of William Brame Elwyn, the sole executrix named in the said pretended will, against Eliza M'Queen, wife of James M'Queen, Esquire, the lawful niece and next of kin of the said deceased, and also against Charles Deare and Thomas Mayhew, Esquires, the executors named in the true and original last will and testament of the said deceased, (bearing date the 26th day of January, 1836.) And whereas a requisition

hath been decreed to issue forth, directed to her Britannic Majesty's Consuls at Boulogne-sur-Mer, and in the city of Paris, in the kingdom of France, their Vice-Consuls, the Worshipful the Magistrates of Boulogne-sur-Mer and Paris, or other city or place, in the said kingdom, where such witnesses, or any of them, reside, or other competent judge, jointly and severally, for receiving, admitting, swearing, examining, and repeating the several witnesses to be produced on a certain allegation given in and admitted in the said cause, on the part and behalf of the said Charles Deare and Thomas Mayhew, and bearing date the first session of Hilary Term, to wit, Wednesday, the 17th day of January last past. Now, know all men by these presents, that I, John Henry Pitcher, one of the procurators exercent in the Arches Court of Canterbury, and one of the original proctors of the said Charles Deare and Thomas Mayhew, parties in the said cause, having, amongst other things, in my original proxy made and given to me by the said Charles Deare and Thomas Mayhew, and which, as their lawful proctor, I have exhibited and left in the registry of the said Prerogative Court, a full and general power to substitute and appoint any proctor or proctors, or other person or persons, for me, and in my name, place, and stead, when and as often as I shall think fit and expedient so to do, or as occasion shall require, do therefore hereby substitute and appoint A. B., of &c., Gentleman, for me, and in my name, place, and stead, as proctor for the said Charles Deare and Thomas Mayhew, to appear before Her Majesty's consuls at Boulogne-sur-Mer and at Paris, their vice-consuls, or the magistrates of Bou-

logne-sur-Mer and Paris, any or either of them, at the time and place appointed by the said requisition for the execution thereof, or before any competent judge, and at any other time and place to which the execution thereof shall be adjourned and prorogued, then and there to produce all and every the witnesses on the said allegation, on the part and behalf of the said Charles Deare and Thomas Mayhew, and procure them to be received, admitted, sworn, examined, and repeated, (*or*, to administer, or cause to be administered, interrogatories to all and every the witnesses to be produced, &c., under and by virtue of the said commission, or to such of them as to him shall seem fit,) and generally to expedite and do all such acts, matters, and things whatsoever as shall or may, by law, be requisite and necessary to be done for and on behalf of the said Charles Deare and Thomas Mayhew, in as full and ample a manner and form as I myself might do, if I were personally present; and I do hereby ratify, allow, and confirm all and whatsoever my said substitute shall lawfully do or cause to be done in and about the premises; in witness whereof I have hereunto set my hand and seal, this                      day of                      , 18—.

(Signed)              J. H. PITCHER (L.S.)

Sealed and delivered in the presence of us.

A. B.

C. D.

The mode of executing the commission may be thus described :—

The commission is presented to one of the Commissioners by the proctor who extracts it, (or his substitute,) in the parish church named in the commission,

and is read publicly by the Examiner, who has been assumed. The Commissioner accepts the execution of the commission, and decrees to proceed according to its tenor, and adjourns the further execution of the commission to an hotel or other convenient place for the purpose.

At the place of adjournment, the proctor or substitute produces his witnesses, who are sworn and monished by the Commissioner, in the same manner as by a surrogate of the court. The witnesses are successively produced, and sworn, and repeated; when this is completed, the proctor, taking out the commission, declares, before the commissioner, that he has no further witnesses to produce, and the commissioner then closes the commission. The production, swearing, and examination of the witnesses, are conducted in precisely the same manner as in London. If a witness declines to appear and undergo his examination, the commissioner is empowered to issue a compulsory against him for that purpose.

In case of the non-appearance of the other party, either by proctor or his substitute, the witnesses are produced, sworn, and repeated, in pain of such absence.

The Examiner or Actuary executes an authentic certificate or return, detailing the execution of the commission, which is signed by the commissioner, and attested by himself.

### *Return to a Commission.*

Return to a  
commission.

To the Right Honourable Sir Herbert Jenner, Knight,  
Doctor of Laws, Master, Keeper, or Commissary  
of the Prerogative Court of Canterbury, lawfully

constituted, his surrogate, or other competent judge in this behalf, we, Henry Luxmoore, Clerk, one of the Commissioners named in the commission hereunto annexed, with all due reverence, send greeting :

And we do humbly certify and make known to you, that on Monday, the 30th day of March, 1840, in the parish church of Barnstaple, in the county of Devon, was presented to us the commission hereto annexed, for the examination of witnesses in a certain cause or business of citing William Arundell Yeo to accept probate of a codicil, bearing date the 6th day of July, 1838, to the last will and testament of George Acland Barbor, late of Fremington House, in the parish of Fremington, in the county of Devon, but at Frankfort-on-the-Maine, Esquire, deceased, now depending before you, promoted by Anne Mackenzie, wife of Tom Dight Mackenzie, formerly Melton, spinster, a legatee named in the said codicil, against the said William Arundell Yeo, the sole executor named in the said will ; and the said commission having been publicly opened and read before us by Charles Bowdler, notary public, therein named, we, at the petition of F. Clarkson, also notary public, and the original proctor of the said Anne Mackenzie in the said cause, did accept and take upon us the execution thereof, and decree to proceed according to its tenor, assuming to us the said Charles Bowdler as and for our registrar or actuary herein, in the presence of George Buckton, notary public, the original proctor of the said William Arundell Yeo in the said cause ; and we did then, at the petition of the said Clarkson, adjourn the further execution of the said commission to the house of William Cory, being a

public inn, situate in the said town, and known as the Fortescue Hotel, where, on Tuesday, the 31st day of the same month, the said Clarkson produced as witnesses, before us, Tom Dight Mackenzie and George Lake, whom we received as such, and caused to be sworn and monished as usual; but the said Buckton, then present in judgment, having, at the time of the production of the said Tom Dight Mackenzie, alleged him to be the husband of Anne Mackenzie, formerly Melton, spinster, and a party in this cause, and having objected to his being received, sworn, and examined as a witness in the said cause, we did direct the deposition of the said Tom Dight Mackenzie to be sealed up, to abide your judgment touching the objection so taken and made as before-mentioned: the said Clarkson then prayed a compulsory against Richard Jeve, Abraham Scott, John Henry Toller, and James Colley March, which we, at his petition, decreed accordingly. We further certify, that on the 1st day of April instant, the said Clarkson produced, as witnesses, Richard Jeve, Abraham Scott, John Henry Toller, and James Colley March, whom we received as such, and caused to be sworn and monished as usual, present Buckton, the other proctor aforesaid; and the said Clarkson then prayed a further compulsory against Stephen Bencraft, John Williams, Alfred Fisher, and Richard Incledon Bencraft, which, at his petition, we decreed to issue accordingly. We further certify, that on the 2nd day of April instant, the said Clarkson produced, as further witnesses, Alfred Fisher, Stephen Bencraft, and John Williams, whom, at his petition, we received as such, and caused to be sworn and monished as usual, present Buckton: the said Clarkson then returned the

said first compulsory, duly served, and prayed a further compulsory against Charles Roberts, John Barry, the Reverend William Charles Hill, Clerk, and John Marshall. We further certify that on the 3rd day of April instant, the said Clarkson produced as further witnesses, John Marshall, Richard Incledon Bencraft, John Barry, and the Reverend William Charles Hill, Clerk, whom we received as such, and caused to be sworn and monished as usual, present Buckton: the said Clarkson then returned his second compulsory, duly served. We further certify, that on the 4th day of April instant, the said Clarkson returned his third compulsory, duly served, and prayed a fourth compulsory against Thomas Scott and William Scott, which we directed to issue accordingly, and produced as a witness Charles Roberts, whom we received as such, and caused to be sworn and monished as usual, present Buckton; and subsequently, on the same day, Clarkson produced, as a further witness, William Scott, whom we received as such, and caused to be sworn and monished as usual, present Buckton; he then alleged that he should not produce Thomas Scott or any further witness under the said commission, which, and the proceedings thereunder, he prayed to be closed, the witnesses produced having been first examined, which we decreed accordingly, present Buckton. We further certify, that the said several witnesses, so produced and sworn as aforesaid, having been separately examined by our said actuary, and their depositions reduced into writing, and subscribed by them respectively, they severally appeared before us, and were repeated thereto, and acknowledged their several subscriptions, and declared the contents of their said depositions to be true, by

virtue of the oath by them respectively taken and made. And we lastly certify and make known to you, that we do now, in obedience to your command, transmit to you the Right Honourable the Judge aforesaid, your surrogate, or other competent judge in this behalf, the whole and entire proceedings had and sped before us, closely and authentically sealed, together with these presents. In witness whereof we have hereunto set our hand, this 6th day of April, in the year of our Lord 1840.

HENRY LUXMOORE, Commissioner.

I, Charles Bowdler, Notary Public by Royal Authority, duly admitted and sworn the Actuary assumed under the commission hereto annexed, do hereby certify and make known to all whom it may concern, that I was present at all and singular the proceedings had and sped under and by virtue of the said commission, as set forth in the return hereunto annexed, and that all things were so had and done as are therein contained. In witness whereof I have hereunto set my hand and seal, this 6th day of April, in the year of our Lord 1840.

CHARLES BOWDLER, Acty. Assd. (L.S.)

If the witnesses reside anywhere out of the province of Canterbury, the ordinary having no power to enjoin the execution of a commission, the latter assumes the form of a requisition, which is directed preferably to the British resident minister or consul, if there be any such, but otherwise to the native authorities.

The execution is, however, precisely similar, and an examiner from London generally attends to take the depositions of the witnesses. If, however, no examiner attends, a resident public notary must be assumed on



the spot ; and in failure of a notary, it is competent to the authority accepting the requisition to assume any other competent person, who is then sworn, that " he will take the depositions of the witnesses to be produced in the cause impartially, and without favour to either party therein."

On the following court-day, the commission is returned by a proctor, on behalf of the commissioners, and unless a responsive allegation is brought in or asserted by the other side, publication will pass.

In the event of a counterplea being brought in and admitted, a similar term probatory is assigned for the proof of that also, and the same course of procuring evidence is adopted. There is this peculiarity, however, in the new term probatory, viz., it is common to the other party also, who is thus enabled to examine further witnesses on his own plea.

After the answers to the libel or primary allegation have been brought in, the party defendant is at liberty to file a responsive plea, and on its admission to proof, to participate in the term probatory of his opponent. The court has occasionally, with the consent of both parties, permitted an allegation of this kind to be brought in before the giving in of the answers, but this is a deviation from the strict rule of practice (b).

(b) Robinson's Admir. Reports, vol. 1, p. 94. Manchester, Macleod. Cripps v. Cripps, Easter Term, 1842, Consistory of London. No objection being taken, the Right Honourable the Judge, in this cause, which was

for restitution of conjugal rights, allowed a responsive allegation, pleading adultery, and praying a divorce on that ground, to be brought in simultaneously with the libel.

The more ordinary course, however, is, not to assert or bring in a responsive plea until the term probatory of the other party has expired, and publication is prayed in the cause.

Examples of responsive pleas will have been found in the previous pages.

The responsive plea having been admitted to proof, a term probatory is assigned in relation thereto, and this has also the effect of re-opening the former term allowed to the other party, who is now at liberty to examine further witnesses on his libel or allegation so long as his opponent's time permits.

When all evidence has been taken upon the various pleas, publication is decreed by the judge, or will pass, agreeably to the Orders of Court (c). By the first of these orders it is directed, "that on the first session of every Hilary, Easter, and Michaelmas Terms, publication shall pass on all pleas given and admitted on or before the bye-day of the term preceding, unless upon such first session cause be shewn, to the satisfaction of the court, for extending the term probatory." The same order also provides, that nothing therein contained shall preclude the court from assigning a short term probatory, or prevent the party giving the plea from sooner praying publication.

The third order provides that publication shall not be postponed, in order to wait for answers, unless cause to the contrary be shewn, satisfactory to the judge.

The fourth regulates the application for an extension of the term probatory.

(c) Orders of Court to serve as general rules of practice, made on the first session of Michaelmas Term, 1827. *Vide post.*

When publication has passed, the depositions of the witnesses may be read and copies taken. After this has been done, the next step is to plead in exception to the testimony of the witnesses, if such is practicable.

As pleas of this nature are of considerable delicacy and importance, a few more detailed observations will not be out of place.

Exceptive allegations are pleas designed to discredit or overturn the testimony of witnesses produced in the principal cause (*d*). They are technically designated as *contra personam*, or *contra dicta*, and each division is subject to its own peculiar rules and principles.

The first, which is an exception to the *general* character and credibility of a witness, may be explained in a few words. In strict practice, this allegation must be brought in before publication, for where a party has anything to allege against the character of a witness, he ought to introduce it into the general responsive allegation, unless he is able satisfactorily to shew to the court that the facts have only lately come to his knowledge (*e*).

The other is an allegation containing exceptions to the *particular* credit of a witness, from what arises out of his deposition, and could not therefore have been pleaded until after publication (*f*).

Exceptive allegations of this kind are received with great caution and delicacy, as it is a principle of the court, whose proceedings are regulated by the civil law, that all facts should be pleaded and proved before the

(*d*) Oughton, Tit. 99.

p. 482. Evans v. Evans, Hagg.

(*e*) Chapman v. Whitby and Parson, Phill. 3. p. 372. Burgoyne v. Free, Hagg. E. R. 2,

C. R. 1, p. 98, in a note.

(*f*) Mynn v. Robinson, Hagg.

E. R. 2, p. 172; and in note.

depositions are seen, from the danger which might arise through the fabrication of evidence to meet the defects of the case (*g*); but wherever the main fact depends upon the evidence of some particular witness, whose credit it therefore becomes necessary to weigh with nicety, the court is less averse to admitting an exceptive plea (*h*).

It is not competent, however, to the excepting party to controvert every declaration of the witnesses, or shew slight variations in their testimony, the direct object of the plea not being either the proof or disproof of the facts at issue in the principal cause (*i*), but the credit of the witness, who must be shewn to have been guilty of a wilful misrepresentation, and to have sworn falsely and corruptly, which falsification is known to the law under the term of *falsitas cum corruptione* (*k*).

There is another species of allegation, admissible after publication, which does not strictly rank under the class of exceptions, but partakes more of the character of a defensive plea.

If a material fact has been pleaded without such specification as will enable the party to apply his defence to it by way of counterplea, and he is, therefore, in some degree taken by surprise on the particulars stated in the depositions of the witnesses, the court will, for the purposes of just defence, allow a contradictory allegation to be brought in, notwithstanding the stage at which the cause has arrived (*l*). And the ne-

(*g*) Verelst v. Verelst, Phill. R. 2, p. 146. Salmon and Others v. Cromwell, Phill. R. 3, p. 220.

(*h*) Salmon and Others v. Cromwell, Phill. R. 3, p. 220.

(*i*) Verelst v. Verelst, Phill. R. 2, p. 146. Atkinson v. Atkin-

son, Add. R. 2, p. 481. Mynn v. Robinson, Hagg. E. R. 2, p. 172.

(*k*) Atkinson v. Atkinson, Add. R. 2, p. 487. Evans v. Evans, Hagg. C. R. p. 100, in note.

(*l*) Evans v. Evans, Hagg. C. R. 1, p. 101.

cessity of this will occur. amongst other instances, where, under the head of general familiarities, an important specific fact has been introduced by a witness which the party can have had no opportunity of contradicting before publication (*m*). The court will not, however, after publication of evidence on a plea laid with sufficient specification, suffer the matter to be the subject of re-examination, merely because the witness has deposed circumstantially, and so as to be capable of being contradicted on some incidental point (*n*).

But where a witness is vouched, or even designed, by the one party to precise facts, it is open to the other to plead, before publication, declarations of the witness contrary to the facts, and he will not be allowed to plead them, after publication, in exception to the testimony of the witness (*o*).

The first article of an exceptive allegation against the particular credit of a witness is in the same wide terms as that under which his general character is attacked (*p*), but being offered after publication is considered by the court only as introductory to the specific exceptions arising out of the depositions, and the examiner is prohibited from taking evidence upon it (*q*).

The other articles usually plead declarations made by a witness out of court, contrary to what he has deposed in his answers in chief or to the interrogatories, or contain such other important contradictions of time and place as are applicable to the details of his evidence (*r*).

(*m*) Halford v. Halford, Phill. R. 3. p. 99.

(*n*) Evans v. Evans, Hagg. C. R. 1. p. 101, in note.

(*o*) Atkinson v. Atkinson, Add. 2, p. 484.

(*p*) Evans v. Evans, Hagg. C. R. 1, p. 98, in note.

(*q*) Ibid. p. 99.

(*r*) Locke v. Denner, Add. 1, p. 360.

An allegation may be filed by the other party responsive to the exceptions taken to his witnesses.

An exceptive allegation also lies to the testimony of a witness not examined in the principal cause, but only in support of an exception to the testimony of a witness produced in the principal cause (s).

It is doubtful whether the particular testimony of a witness may be excepted to, after an exception has been taken to his general character. No instance of this double exception to one and the same witness is known (t).

The following will show the form of an exceptive allegation :—

### *Exceptive Allegation.*

Exceptive  
allegation.

In the Consistory Court of London.

MATTHEWS *against* REVILL otherwise REVELL.

On which day Tebbs, in the name and as the lawful proctor of Thomas Revill, otherwise Revell, one of the parties in this cause, and under that denomination, and by all other lawful ways and means which may be most beneficial and effectual for his said party, and to all intents and purposes in law whatsoever, said, alleged, and in law articulately propounded as follows, to wit,

First.

That no faith or credit, (at least sufficient in law,) is or ought to be given to the sayings or depositions of William Nelson Matthews, a pretended witness, produced, sworn, and examined in and upon the several pretended positions or articles of a certain pretended

(s) Ball v. Ball, Add. 3, p. 9.

(t) Evans v. Knight and Moore, Add. 1, p. 143.

libel, given in and admitted in this cause on the part and behalf of Susan Matthews, spinster, the other party in this cause ; for that whereas he, the said William Nelson Matthews hath, in his deposition or examination upon the several articles of the said libel, taken on the 7th day of July last past, among other things, on his oath, deposed and answered as follows ; to wit, “ That having had occasion to come to London on the ~~14th~~ day of August last, (meaning thereby August 16<sup>th</sup> 1807) he did not return again to Enfield till the afternoon of the next day, being the fifteenth day of the said month, and on that occasion he travelled on the outside of the Enfield coach, belonging to Mr. Game, which coach was drove by one Newman, the coachman, and he met the same at the Basing House, in Kingsland Road, about five o’clock in the afternoon of the said day, shortly after which the said coach set off for Enfield ; that besides the deponent and the coachman, there were four outside passengers ; viz., Mr. Revell, (the party complained of in this cause), who was known to the deponent as being a person residing at Enfield, though the deponent did not then know his name ; his fellow-witness, John Parratt, a person who was a stranger to the deponent, but whose name he now knows to be Miles, and a labourer of the name of Waller, who is very deaf. That the said Waller sat on the coachbox with the coachman, and the deponent, the said John Parratt, Mr. Revell, and Mr. Miles, sat on the roof of the said coach, the deponent sitting on the right-hand side outermost ; Parratt next to him, Mr. Revell next to Parratt, and the said Mr. Miles on the left-hand side ; and as the said coach was passing through the further end of Tottenham, nearly opposite

Coleman's nursery ground, about six o'clock on the said evening, the aforesaid Mr. Revell, seeing two young women walking on the right-hand side of the road towards Edmonton, (they being a little before the coach,) said, speaking of the said young women, 'If them vermin get up to ride I will get down and walk, as no such whores shall ride on a coach with me.' And the deponent, then supposing the said two young women to be the daughters of Mr. Matthews, a plumber, in Baker Street, Enfield, in the county of Middlesex, who is the deponent's first cousin, and being rather angry at such, the said Mr. Revell's speech, (though when the coach passed them he saw that they were not his said relatives,) asked him, the said Mr. Revell, who those whores were? to which he, the said Mr. Revell, replied they were the plumber's daughters in Baker Street, (meaning Baker Street, Enfield.)" And also, in answer to the thirteenth interrogatory, administered to him on the part and behalf of the said Thomas Revell, at the time of such his examination, further deposed and answered in the words following, (to wit,) "That in less than an hour after the Enfield coach arrived at Enfield on the same evening that the defamatory words in question were spoken, which, for the reasons hereinbefore set forth, he has no doubt was on Saturday, the 15th day of August last year, he, the respondent, and Joseph Matthews, the father of the producent, did call at the ministrant's house at Enfield, but he never called there at any other time." And also further, "That as the said Mr. Matthews and the respondent were returning past the window where the ministrant was, he, the said Joseph Matthews, did swear at and abuse the ministrant, and call him a blackguard and a villain and



the like." Now he, the said William Nelson Matthews, hath, in his said examination in chief, and upon the said thirteenth interrogatory therein, knowingly and wilfully deposed and answered falsely and untruly, for the truth and fact was and is, and the party proponent doth allege and propound, that he, the said Thomas Revell did not go to Enfield, on the roof of the Enfield stage coach, in the afternoon, on the 15th day of August, 1807, in company with the said William Nelson Matthews, John Parratt, Miles, Waller, and the coachman of the said stage-coach, nor did he on the said day, or at any other time, ever express or declare himself, either to or in the presence and hearing of the said William Nelson Matthews in the words or to the effect as by him deposed, but the party proponent doth further expressly allege and propound, that he, the said Thomas Revell did go to Enfield on the roof of the Enfield stage-coach, belonging to a Mr. Game, and which was driven by Thomas<sup>1</sup> Newman, the coachman, on Saturday, the 11th day of July, 1807, in company with the said William Nelson Matthews, and also of John Parratt and a Mr. Charles Miles, who were also sitting on the roof, and of one Thomas Waller, who was sitting on the box of the said stage-coach with the coachman, and on such occasion, and not on the said 15th day of August, as deposed to by the said William Nelson Matthews, some conversation did take place between the said William Nelson Matthews and the said Thomas Revell respecting certain houses within the parish of Enfield, as being of a description which it was a shame for the parishioners to suffer, and such was the only occasion upon which he, the said Thomas Revell, ever did go to Enfield by the said stage-coach in company

with the said William Nelson Matthews, John Parratt, Charles Miles, and Thomas Waller; and the party proponent doth further allege and propound, that soon after the arrival of the coach at Enfield, in the evening of the said 11th day of July, and not on the said 15th day of August, as deposed to by the said William Nelson Matthews, he, the said William Nelson Matthews, accompanied by Joseph Matthews, the father of Susan Matthews, spinster, the other party in this cause, did call at the house of the said Thomas Revell, at Enfield, when he, the said Joseph Matthews, did abuse and insult him, the said Thomas Revell, in a most gross and violent manner, and call him a blackguard, villain, and other opprobrious names; and this was and is true, public, and notorious, and so much the said Susan Matthews, spinster, the other party in this cause, doth know or hath heard, and in her conscience believes and has confessed to be true, and the party proponent doth allege and propound everything in this and the subsequent articles of this allegation contained jointly and severally.

Second.

Also, that whereas the said William Nelson Matthews hath, in answer to the twelfth interrogatory, administered to him on the part of the said Thomas Revell, at the time of his aforesaid examination as a witness in this cause, among other things, on his oath, further deposed and answered in the words following, to wit, "that he did go on the evening of Saturday, the 15th day of August last year, to Enfield, on the outside of the Enfield stage-coach, and the ministrant ~~was also~~ <sup>is also</sup> a passenger on the outside of such stage-coach; ~~that~~ <sup>and</sup> he never did before, to his recollection, ride on the outside of the said stage-coach in company with the ministrant,

and certainly never since that time; that when he so rode with the ministrant there were present, besides the respondent and coachman, the aforesaid John Parrott, his fellow-witness, who then lived at Enfield, but now lives somewhere at Essex, a Mr. Miles, who lives at Winchmore Hill, as he believes, and one Waller, a labourer, who lives at Enfield; that on the very next day after the said defamatory words were spoken by the ministrant, he, the respondent, made a memorandum in his own handwriting of what had, as aforesaid, passed, and of the day when the same happened, which memorandum he carried in his pocket till it was nearly worn out, but before it was quite gone, he took a copy of such memorandum in his own handwriting, also which he has now with him; that he well remembers, from having read the said original memorandum very often, that it was therein mentioned to have been on Saturday, the 15th day of August, that the circumstance hereinbefore alluded to happened, and the same also appearing by the memorandum now in his possession, which is a copy of the aforesaid original memorandum taken by him as aforesaid, he, the respondent, does, therefore, verily believe that it was on that day, and not on Saturday, the 11th July, that he rode with the ministrant on the outside of the said Enfield coach." Now he, the said William Nelson Matthews, hath therein also knowingly and wilfully deposed and answered on his oath falsely and untruly, for the truth and fact was and is, and the party proponent doth allege and propound, that the said Thomas Revell quitted London early in the morning of Monday, the 3rd day of August, in the year of our Lord 1807, by the Plymouth coach, and went therein to Plymouth, in the county of Devon, and

he, the said Thomas Revell remained at Plymouth, in the said county, until the morning of Thursday, the thirteenth day of the said month, when he left that place by the Plymouth coach, and on the fifteenth day of the said month, and not before, he returned to and arrived in London, when, after having stopped a short time and taken some refreshment with his son-in-law, Mr. Pearson, at his, the said Thomas Revell's, own house, in Shoreditch, he immediately went off to his country house at Enfield, in his own single-horse chaise, and did not go, or was at any time either in or upon the Enfield stage-coach, on the said 15th day of August, 1807; and this was and is true, public, and notorious, and so much the said Susan Matthews, spinster, the other party in this cause, doth know, or hath heard, and in her conscience believes and has confessed to be true; and the party proponent doth allege and propound as before.

Third.

That all and singular the premises were and are true and so forth.

When publication has passed on the depositions taken on an exceptive allegation, or when such allegations have been waived, the cause is concluded and assigned for sentence.

There is another mode of conducting a suit, or rather of laying an unimportant or incidental matter before the court, which is called an act on petition. Forms of this pleading have been given before and need not be repeated. When the pleading is finished, in technical language the act is said to be concluded, and the proofs or affidavits having been filed on each side, the Court assigns "to hear his pleasure" on the question.

THE COMPULSORY  
EXECUTION OF SENTENCES,  
AND  
PROCEEDINGS IN CONTEMPT.

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By an Order of Court it is directed, that "when a party has been duly cited, (*i. e.* personally or legally served,) and shall not appear on the day assigned for his appearance, such party shall be pronounced in contempt, and the proceedings shall, on the following court-day and afterwards, be carried on in pain of his contempt." This has, however, seldom or never been done. The practice, as settled by the judges, is to allow, in every instance, an extension of time to the next court-day, which is technically called "continuing the certificate" of the process. In the interim, a notice of the promoter's intention to apply to the judge on the ensuing court-day, to pronounce the non-appearing party in contempt, must be personally served upon or left at the house of the latter. If no appearance be afterwards given, as required by the notice, the court, on being informed of the fact, and satisfied of the due service of the process, will pronounce the party in contempt, and will decree his contempt to be signified, agreeably to the act 53 Geo. III., c. 127, s. 1.

In most cases of a primary citation or decree, it is not requisite to signify the contempt, and the court,

therefore, will only pronounce the party cited contumacious and in contempt, and will direct the proceedings to be henceforward carried on and prosecuted to a sentence in pain of his contumacy. This is done in testamentary and matrimonial suits. In others, such as for the subtraction of church-rate, or the restitution of conjugal rights, where an appearance is required from the party cited, it is enforced by a *significavit*.

The Court of Arches always requires a decree to see proceedings to be issued and served before the promoter can proceed *in pœnam*. This is also, though not generally, used in the Consistory of London.

The decree is as follows, viz.:—

*Decree to see Proceedings with Intimation.*

Decree to see  
proceedings  
(after con-  
tempt.)

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the whole province of Canterbury, greeting:

Whereas we, rightly and duly proceeding in a certain cause of subtraction of church rate, which is now depending before us undetermined in judgment, by virtue of letters of request from the Reverend James Thomas Law, Clerk, Master of Arts, Vicar-General of the Right Reverend Father in God, John, by Divine permission, Lord Bishop of Lichfield, and Official Principal of the Consistorial and Episcopal Court of Lichfield, lawfully constituted, between Samuel Sherwin and John Welch, the churchwardens of the parish of Saint Werburgh, in the borough of Derby, and diocese of Lichfield, and

province of Canterbury, the parties promoting the said cause, on the one part, and James Wragg, a parishioner and inhabitant of the said parish, the party against whom the said cause is promoted, on the other part, at the petition of the proctor of the said Samuel Sherwin and John Welch, alleging that the said James Wragg hath been duly served with a decree, under seal of the said Arches Court of Canterbury, to appear personally or by his proctor, duly constituted, before us, our surrogate, or some other competent judge in this behalf, and to answer to the said Samuel Sherwin and John Welch in the said cause, but that he hath refused, and still doth refuse, to appear, or to cause an appearance to be given thereto, in pain of the said James Wragg, thrice called, and in no wise appearing, pronounced him contumacious and in contempt, and at the further petition of the proctor of the said Samuel Sherwin and John Welch, decreed the said James Wragg to be cited, intimated, and called to appear in judgment, on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said James Wragg, by shewing to him these original presents under seal, and by leaving with him a true copy hereof, to appear personally, or by his proctor, duly constituted, before us, our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the 31st day of December, in the present year 1844, at the hour of ten in the forenoon, and there to abide,

if occasion require, during the sitting of the court, and from thence on every general session, bye-day, or additional court-day of the said Arches Court of Canterbury, then and there to see and hear all and every the judicial acts, matters, and things needful and by law required to be done and expedited in and about the premises, until a definitive sentence in writing shall be read, signed, promulged, and given, or until a final interlocutory decree shall be made and interposed in the said cause, if he shall think it for his interest so to do; and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Samuel Sherwin and John Welch; and moreover that you intimate, or cause to be intimated, to the said James Wragg, (and to whom we do also intimate by the tenor of these presents,) that if he does not appear on the several days, and at the time and place, and to the effect, and in manner and form aforesaid, or appearing does not shew good and sufficient cause, concludent in law to the contrary, we, our surrogate, or some other competent judge in this behalf, doth intend to proceed and will proceed to do all and every the judicial acts, matters, and things needful and by law required to be done and expedited in and about the premises, and to promulge and give a definitive sentence in writing, or to make and interpose a final interlocutory decree in the said cause, the absence or rather contumacy of the said James Wragg, so cited and intimated, in any wise notwithstanding; and what you shall do or cause to be done in the premises you shall duly certify us, our surrogate, or some other competent judge in this behalf, together with these presents.

Dated, &c.



*Decree to see Proceedings with Intimation.*

Charles James, by Divine permission, Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting:

Decree to  
see proceed-  
ings (after  
contempt.)

Whereas the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General, and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, rightly and duly proceeding in a certain cause of nullity of marriage, by reason of impotency, which is now depending before him in judgment, between Jane Sparrow, spinster, falsely called Harrison, and the wife of Fiske Goodeve Fiske Harrison, Esquire, the party promoting the said cause, on the one part, and the said Fiske Goodeve Fiske Harrison, of the parish of Copford, in the county of Essex, and our diocese of London aforesaid, Esquire, the party against whom the said cause is promoted on the other part, hath, at the petition of the proctor of the said Jane Sparrow, spinster, falsely called Harrison, alleging that the said Fiske Goodeve Fiske Harrison having been duly personally served with a monition, under seal of our said court, to submit to an inspection of his parts of generation by competent persons appointed for that purpose, had refused to submit to such inspection, and had thereupon been duly pronounced guilty of contumacy and in contempt, decreed the said Fiske Goodeve Fiske Harrison to be cited, intimated, and called to appear in judgment on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, (justice so requiring.) We do, therefore,

hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Fiske Goodeve Fiske Harrison, by shewing to him these presents under seal, and by leaving with him a true copy hereof, to appear personally, or by his proctor, duly constituted, before our vicar-general and official principal aforesaid, his surrogate, or some other competent judge, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, in the city of London, and place of judicature there, on the third session of Trinity Term, to wit, Tuesday, the 22nd day of June instant, at the hour of the sitting of the court, in the forenoon of the same day, and there to abide, if occasion require, during the sitting of the court, and thenceforward on every general session, bye-day, extra and additional court-day of our said court, at the hour of the sitting of the court, and there to abide, if occasion require, during the sitting of the court on each of such days, then and there to see and hear witnesses produced and sworn on the libel heretofore given in and admitted on the part and behalf of the said Jane Sparrow, spinster, falsely called Harrison, their sayings and depositions published, and to see and hear all and every the further other judicial acts, matters, and things needful and by law required to be done in and about the premises, until a definitive sentence in writing shall be read, signed, promulged, and given, or a final interlocutory decree shall be made and interposed in the said cause; and further to do and receive as unto law and justice shall appertain, under pain of the law and contempt thereof, at the promotion of the said Jane Sparrow, spinster, falsely called Harrison; and more-

over that you intimate, or cause to be intimated, unto the said Fiske Goodeve Fiske Harrison, (to whom we do so intimate by the tenor of these presents,) that if he do not appear on the day and days, at the time and place, to the effect, and in manner and form aforesaid, or on appearing do not shew good and sufficient cause concludent in law to the contrary, our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed, and will proceed, to do all and every the further judicial acts, matters, and things needful and by law required to be done and expedited in and about the premises as aforesaid, and to read, sign, promulge, and give a definitive sentence in writing, or to make and interpose a final interlocutory decree therein, the absence or rather contumacy of him, the said Fiske Goodeve Fiske Harrison, so cited and intimated, in any wise notwithstanding; and what you shall do or cause to be done in the premises you shall duly certify our vicar-general and official principal aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Given at London, &c.

The same course is pursued where the process to be enforced is final, such as a monition for the payment of costs, alimony, &c.

An affidavit, however, is made by the party who sues for costs or alimony, that no part of the sum claimed has been received. In respect of costs, an affidavit also is required from the proctor, to the same effect, before the court will make its order of contempt.

These affidavits must be sworn either before a surrogate, or under a special commission.

It will be in place here to give a specimen of the final monition (a) :—

*Monition for Costs.*

Monition for costs.

William, by Divine Providence, Archbishop of Canterbury, Primate of all England, and Metropolitan, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole province of Canterbury, greeting :

Whereas the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary of our Prerogative Court of Canterbury, lawfully constituted, rightly and duly proceeding in a certain cause or business of citing William Arundell Yeo, Esquire, the sole executor named in the last will and testament of George Acland Barbor, late of Fremington House, in the parish of Fremington, in the county of Devon, but at Frankfort-on-the-Maine, Esquire, deceased, to take upon himself the probate and execution of a pretended codicil to the said will, bearing date, as pretended, the 6th day of July, in the year 1838, or of shewing cause to the contrary, which was lately depending in judgment before him in our Prerogative Court, promoted by Anne Mackenzie, wife of Tom Dight Mackenzie, the sole legatee named in the said codicil, as pretended, against the said William Arundell Yeo, did,

(a) The process assumes the name and form of a *monition* instead of a citation or decree, whenever it is necessary to convent a party who has *submitted to the jurisdiction* of the court. On the same ground, the instrument which issues at the commence-

ment of a cause of appeal against the judge *a quo*, to transmit the records of the case, is conceived in the form of a *monition*, inasmuch as it is an injunction from the superior ordinary to a subordinate official.—*See Appeals.*

on the second session of Trinity Term, to wit, the 6th day of June, in the year 1842, by his final interlocutory decree, pronounce against the force and validity of the said pretended codicil, and did condemn the said Anne Mackenzie and the said Tom Dight Mackenzie, her husband, in the costs made and to be made in the said cause on the part of the said William Arundell Yeo; and whereas an appeal from the said decree was afterwards interposed and prosecuted on the part of the said Anne Mackenzie, wife of the said Tom Dight Mackenzie, before the Judicial Committee of her Majesty's Most Honourable Privy Council; and whereas, on the 20th day of May, in the present year 1844, their lordships were pleased to agree to report their opinion to Her Majesty against the said appeal, that the decree appealed from ought to be affirmed, and the cause remitted with all its incidents, save the costs incurred on the said appeal to the judge, from whom the same was brought, and, on the 23rd day of the same month, Her Majesty was pleased, by and with the advice of her Privy Council, to confirm the said report; and whereas, on the third session of Trinity Term, to wit, the 11th day of June, in the present year 1844, the proctor of the said William Arundell Yeo brought unto and left in the registry of our said Prerogative Court, a remission, under seal of the judicial committee aforesaid, and our master, keeper, or commissary aforesaid, thereupon decreed to proceed according to the tenor of former acts, and assigned to hear on the taxation of the costs of the said William Arundell Yeo, (as by the acts and records of our said court, on reference being thereunto had, will more fully appear;) and whereas, on

the day of the date of these presents, the proctor of the said William Arundell Yeo porrected his bill of costs, which our master, keeper, or commissary aforesaid, on the report of John Iggulden, Notary Public, one of the deputy registrars of our said court, taxed and moderated at the sum of nine hundred pounds thirteen shillings and tenpence, besides the expense of a monition for the payment of the same; and whereas our master, keeper, or commissary aforesaid, at the petition of the proctor of the said William Arundell Yeo, rightly and duly proceeding, hath decreed the said Anne Mackenzie and Tom Dight Mackenzie to be monished to the effect and purpose hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize and empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish, or cause to be monished, the said Anne Mackenzie and Tom Dight Mackenzie, her husband, (whom we do also monish, by the tenor of the presents,) to pay, or cause to be paid to the said William Arundell Yeo, or to his proctor, for his use, the said sum of nine hundred pounds thirteen shillings and tenpence, of good and lawful money of Great Britain, for the costs taxed and moderated as aforesaid, within fifteen days after the service of these presents, together with the expenses thereof, under pain of the law and contempt thereof, at the promotion of the said William Arundell Yeo; and what you shall do, or cause to be done in the premises, you shall duly certify our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, this 26th day of November, A.D.

1844, and in the seventeenth year of our translation (b).

*Monition for Alimony.*

Charles James, by Divine permission, Bishop of London, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout our whole diocese of London, greeting:

Monition for alimony.

Whereas the Right Honourable Stephen Lushington, Doctor of Laws, our Vicar-General and Official Principal of our Consistorial and Episcopal Court of London, lawfully constituted, rightly and duly proceeding in a certain cause or business of divorce or separation from bed, board, and mutual cohabitation, by reason of adultery, now depending in judgment before him in the said court, promoted by Ann Birch, wife of Richard Birch, against the said Richard Birch, of the parish of Saint Dunstan in the West, in the city of London, and within our diocese and jurisdiction, did, on the extra court-day after Trinity Term, to wit, Wednesday, the 7th day of August, in the year 1844, at the petition of the proctor of the said Ann Birch, allot the sum of thirty-five pounds per annum, to be paid quarterly, to her, the said Ann Birch, for alimony during the dependence of the suit, and to commence from the return of the citation in the said cause; and subsequently, at the further petition of the said proctor, alleging the sum of

(b) The forms of monitions in the ecclesiastical courts, under the text will serve, *mutatis mutandis*, for any other monition, any circumstances. I have, therefore, not encumbered the object of which is to enforce text with any further precedents. the payment of money suable in

· eight pounds fifteen shillings to have become due on the 20th day of June last past, and to be now due to the said Ann Birch, for one quarter's alimony, at and after the rate aforesaid, (reckoning from the 20th day of March preceding,) decreed the said Richard Birch to be monished, to the effect and purpose hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, that you monish, or cause to be monished peremptorily, the said Richard Birch, (whom we do so monish by the tenor of these presents,) to pay, or cause to be paid, within fifteen days after the service of these presents, to George Samuel Heales, of Doctors' Commons, in the city of London, the proctor of the said Ann Birch in the said cause, the said sum of eight pounds fifteen shillings, under pain of the law and contempt thereof; and what you shall do, &c.

The *significavit* is a process from the Ordinary, directed to the King, stating the nature of the proceedings, and requiring the attachment of the party for his disobedience of the ecclesiastical laws. This process must issue within ten days from the date of the decree.

### *Significavit.*

**Significavit.** To her Most Excellent Majesty and our Sovereign Lady Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, William, by Divine Providence, Lord Archbishop of Canterbury, Primate of



all England, and Metropolitan, health in Him by whom Kings and Princes rule and govern :

We do hereby notify and signify unto your Majesty, that A. B., of the parish of Bideford, in the county of Devon and province of Canterbury, wife of C. D., and the said C. D., of the same parish, county, and province, professor of music, have been duly pronounced guilty of manifest contumacy and contempt of the law and jurisdiction ecclesiastical, in not obeying our lawful commands, to pay, or cause to be paid, to E. F., Esquire, or to his proctor, for his use, the sum of nine hundred pounds thirteen shillings and tenpence, of good and lawful money of Great Britain, (for the costs made on the part of the said E. F., and duly taxed and moderated, in a certain cause of citing the said E. F., the sole executor named in the last will and testament of G. H., late of \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, Esquire, deceased, to take upon himself the probate and execution of a pretended codicil to the said will, bearing date, as pretended, the 6th day of July, in the year of our Lord 1844, or of shewing cause to the contrary, which was lately depending in our Prerogative Court of Canterbury. before the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary of our said Prerogative Court, lawfully constituted, promoted by the said A. B., (the wife of the said C. D.,) the sole legatee named in the said codicil, as pretended, against the said E. F., and in which cause the said Sir Herbert Jenner Fust, duly proceeding, by his final interlocutory decree, having the force and effect of a definitive sentence in writing, did pronounce against the force and validity of the

said pretended oodcil, and did condemn the said A. B. and the said C. D., her husband, in the costs made and to be made in the said cause on the part of the said E. F.,) pursuant to our monition, duly issued under the seal of our said Prerogative Court and duly and personally served on the said A. B. and the said C. D., and duly returned into our said Prerogative Court, with a certificate and affidavit of the execution thereof, by not paying, or causing to be paid, to the said E. F., or to his proctor, for his use, the said sum of nine hundred pounds thirteen shillings and tenpence, of lawful money of Great Britain, pursuant to and within the time mentioned in the said monition, and which time hath long since elapsed. We, therefore, humbly implore and entreat your said Most Excellent Majesty would vouchsafe to command the bodies of the said A. B. and C. D. to be taken and imprisoned for such contumacy and contempt.

Given under the seal of our said Prerogative Court, the            day of            , in the year of our Lord 1845.

The significavit from the Arches Court issues in the name of the judge, in like manner with the other processes used by that court.

A writ *de contumace capiendo* thereupon issues out of the Court of Chancery, directed to the sheriff of the county, and the party is attached.

If the party, after having been pronounced in contempt, is desirous of regaining either his liberty or his standing in the suit, he must purge such his contempt—a proceeding which is conducted in the following manner. He must appear before a surrogate of the court by which he has been pronounced

contumacious, and on alleging his readiness to obey the lawful commands of the Ordinary, and also (if he has disobeyed a pecuniary demand, such as a decree for the payment of a church-rate, alimony, costs, &c.,) on his paying such amount, in addition to the contumacy fees, or further expenses incurred by the other side, in consequence of the contumacy, such surrogate will administer to him an oath, "*that he will in future obey the lawful commands of the Ordinary.*" On this being done, the same surrogate will decree the party to be absolved from his contempt, and will direct the following writ to issue for his deliverance out of custody.

The writ of deliverance is as follows :—

### *Writ of Deliverance.*

Whereas Edward Richardson, of Chelmsford, in the county of Essex, whom lately, at the denouncing of John Dubois for contumacy and by writ issued thereupon, you attached by his body until he should have made satisfaction for the contempt, now he having submitted himself and satisfied the said contempt, we hereby empower and command you, that without delay you cause the said Edward Richardson to be delivered out of the prison in which he is so detained, if upon that occasion and no other he shall be detained therein.

Writ of deliverance.

Given under the seal of the Prerogative Court of Canterbury.

This writ is signed by one of the Registrars, or Deputy Registrars, as the case may be.

The Act directs that, on the above-recited order being shewn to the sheriff, gaoler, or other officer in whose cus-

tody the party is, the former shall, so soon as such party shall have discharged the costs lawfully incurred by reason of such custody and contempt, forthwith discharge him.

But there are certain prescribed cases in which the legislature has directed that the oath of obedience to the Ordinary shall or may be dispensed with.

It is provided by 3 and 4 Vict. c. 93, s. 1, (an Act to amend the Act for the better Regulation of Ecclesiastical Courts,) "that the Judicial Committee of Her Majesty's Most Honourable Privy Council, or the judge of any ecclesiastical court, if it shall seem meet to the said judicial committee or judge, to make an order upon the gaoler, sheriff, or other officer in whose custody any party may be, under a writ *de contumace capiendo*, for discharging such party out of custody; and such sheriff, gaoler, or other officer shall, on receipt of the said order, discharge such party, but no such order shall be made *without the consent of the other party or parties to the suit.*"

It is also provided by the same section, "that in cases of subtraction of church-rates for an amount not exceeding five pounds, where the party in contempt has suffered imprisonment for six months and upwards, the consent of the other parties to the suit shall not be necessary to enable the judge to discharge such party so soon as the costs lawfully incurred by reason of the custody and contempt of such party shall have been discharged, and the sum for which he may have been cited into the ecclesiastical court shall have been paid into the registry of the said court, there to abide the result of the suit, and the party so discharged shall be released from all further observance of justice in the said suit."

The form of the order or warrant of discharge, which is in accordance with the schedule annexed to the act, is as follows :—

*Order of Discharge.*

Forasmuch as good cause hath been shewn to us, the  
 Worshipful John Daubeney, Doctor of Laws, Surrogate  
 of the Right Honourable Sir Herbert Jenner Fust,  
 Knight, Doctor of Laws, Master, Keeper, or Commis-  
 sary of the Prerogative Court of Canterbury, lawfully  
 constituted, wherefore John Denner Blake, of Honiton,  
 in the county of Devon, now in your custody, as it is  
 said, under a writ *de contumace capiendo*, issued out of  
 Her Majesty's Court of Queen's Bench, in a suit in  
 which the said John Denner Blake, as one of the natural  
 and lawful children and surviving administrator of the  
 goods, chattels, and credits of Richard Blake, late of  
 Honiton, in the county of Devon aforesaid, innkeeper,  
 had been cited to bring into and leave in the registry of  
 the said Prerogative Court, a true, full, plain, perfect,  
 and particular inventory of the said goods, chattels, and  
 credits, which at any time since the death of the said  
 deceased had come to his hands, possession, or know-  
 ledge ; and also to render a true and just account of his  
 administration thereof, promoted by Henry Blake and  
 James Blake, two other of the natural and lawful chil-  
 dren of the said deceased, against the said John Denner  
 Blake, should be discharged from custody under the said  
 writ. We, therefore, with the consent of the proctor  
 of the said Henry Blake and James Blake, command  
 you, on behalf of our Sovereign Lady the Queen, that  
 if the said John Denner Blake do remain in your cus-

Order of dis-  
charge.

tody for the said cause, and no other, you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, for which this shall be your sufficient warrant.

Given under the seal of the said Prerogative Court at London, the 14th day of February, in the year of our Lord 1846.

It is signed by one of the Registrars or Deputy Registrars.

In consequence of the failure of justice, consequent on the process of the ecclesiastical courts being inoperative out of the limits of their jurisdiction and against persons having privilege of peerage, lords of Parliament, and members of the House of Commons, it is provided by the 2d and 3rd William IV., c. 93, (an Act for enforcing the Process upon Contempts in the Courts Ecclesiastical of England and Ireland,) that in all causes cognizable in the ecclesiastical courts, when any of the privileged persons before mentioned, and all other persons domiciled or residing in England or Ireland, and beyond the limits of the jurisdiction of such courts, having been cited to appear, or required to comply with any lawful order, as well final as interlocutory, shall neglect or refuse to pay obedience to any such order, or when any such person shall commit a contempt in the face of such court, or any other contempt towards such court, or the process thereof, it shall be lawful for the judge, or his successor, to pronounce such person contumacious and in contempt, and within ten days afterwards to signify the same to the Lord Chancellor, &c.; and thereupon, and in case the person so reputed to be in contempt, shall not be a peer, lord

of Parliament, or member of the House of Commons, a writ *de contumace capiendo* shall issue from the Court of Chancery, &c. It is also provided by the same statute, that when any person privileged, or other, shall have been ordered to pay any sum of money, and shall neglect or refuse to comply with a monition to such effect, it shall be lawful for the judge, or his successor, to pronounce such person contumacious and in contempt, and within ten days afterwards to cause a copy of the order, under the seal of the court, or under the hand of such judge, to be exemplified and certified to the Lord Chancellor, &c., whenever the person who shall have been so pronounced contumacious shall be domiciled or residing, or shall be seized or possessed of, or entitled to, any real or personal estate, goods, chattels, or effects, in England, &c.; and the Lord Chancellor, &c., shall forthwith cause such copy to be enrolled, and shall thereupon cause process of sequestration to issue against the real and personal estate, goods, chattels, and effects in England of the party against whom such order shall have been made, in order to enforce obedience to and performance of the same, &c.

In proceedings carried on in this manner, no act is done without the party who has not appeared being thrice called, and the same form is maintained up to the final decree or sentence being given.

The following is a form of a sentence *in pœnam* :—

### *Sentence in Pœnam.*

In the name of God, amen. We, Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, Sentence in  
*pœnam*.

lawfully constituted, rightly and duly proceeding, having heard, seen, and understood, and fully and maturely discussed the merits and circumstances of a certain cause or business of proving, in solemn form of law, by witnesses, the last will and testament of Oxley Tilson, late of Coleman Street, in the city of London, solicitor, a widower, without child or father, deceased, (the said will bearing date the 2d day of April, 1842,) and the said deceased having whilst living, and at the time of his death, goods, chattels, or credits in divers dioceses or peculiar jurisdictions, within the province of Canterbury, sufficient to found the jurisdiction of the said Prerogative Court, and which cause is controverted and now remains undetermined in judgment before us, between George Tayler, Esq., one of the executors named in the said will, the party promoting the said cause on the one part, and George Tilson, the natural and lawful brother of the said deceased, and also Maria Matilda Tilson, widow, his natural and lawful mother, and next of kin, and Thomas Tilson, Charles Tilson, and Maria Matilda Lee, (wife of Henry Lee,) his natural and lawful brothers also, and sister, and Eliza Shadbolt, spinster, his lawful niece, respectively cited to see the said will propounded and proved in solemn form of law, the parties against whom the said cause is promoted on the other part, and the said George Tayler, George Tilson, and Eliza Shadbolt, (by her guardian, Charles Shadbolt,) lawfully appearing before us in judgment by their proctors, and the said Maria Matilda Tilson, Thomas Tilson, Charles Tilson, and Maria Matilda Lee, having been thrice called and not appearing, and the proctor for the said George Tayler praying sentence to be given for and justice to



be done to his said party, and the proctors for the said George Tilson and Eliza Shadbolt, (by her guardian, the said Charles Shadbolt,) also respectively earnestly praying justice to be done to their said parties ; and we, having first carefully and diligently searched into and considered the whole proceedings had and done before us in the said cause or business, and having observed all and singular the matters and things that by law in this behalf ought to be observed, have thought fit, and do thus think fit, (in pain of the contempt of the said Maria Matilda Tilson, Thomas Tilson, Charles Tilson, and Maria Matilda Lee, thrice called, but in no wise appearing,) to proceed to the giving our definitive sentence or final decree in the said cause or business, in manner and form following, (that is to say,) Forasmuch as by the acts enacted, deduced, alleged, exhibited, propounded, proved, and confessed in the said cause or business, we have found, and it doth evidently appear unto us, that the proctor of the said George Tayler hath fully and sufficiently founded and proved his intention, deduced in a certain allegation in writing, and last will and testament of the said Oxley Tilson, bearing date the 2nd day of April, 1842, as aforesaid, propounded, exhibited, and admitted in the said cause or business, (and which said allegation and last will and testament we take, and will have taken, as if here read and inserted,) for us to pronounce as hereinafter is pronounced ; and that nothing, at least effectual in law, hath, on the part and behalf of the said George Tilson and Eliza Shadbolt, been excepted, deduced, alleged, exhibited, propounded, proved, or confessed in the said cause or business, which may or ought in any way to defeat, prejudice, or weaken the intention of the said

George Tayler, one of the executors named in the said last will and testament of the said deceased, bearing date as aforesaid. Wherefore we, Herbert Jenner Fust, Knight, Doctor of Laws, Master, Keeper, or Commissary aforesaid, first calling upon the name of Christ, and having God alone before our eyes, and having heard counsel learned in the law, and also the proctors on all sides, do pronounce, decree, and declare, that the said Oxley Tilson, the testator in this cause, whilst living, and of sound and disposing mind, memory, and understanding, and of the age of twenty-one years and upwards, rightly and duly made and executed his last will and testament in writing, exhibited and pleaded in this cause, on the part and behalf of the said George Tayler, bearing date the 2nd day of April, in the year of our Lord 1842, and did give, will, bequeath, devise, dispose, and do in all things as is therein contained; and we do pronounce, decree, and declare, for the full force, effect, and validity of the said true and original last will and testament of the said deceased, bearing date as aforesaid, to all intents and purposes in the law whatsoever, and do approve and receive the same, and decree probate thereof to be granted to the said George Tayler, by this our definitive sentence or final decree, which we read and promulge by these presents.

If the party sought to be cited cannot be personally served, the citation or decree must be returned into court with a special certificate, detailing the ineffectual attempts made by the mandatory, and upon this shewing the judge will direct a decree *viis et modis*, or by ways and means, to issue.

This decree is as follows :—

*Decree Viis et Modis.*

William, by Divine Providence, Archbishop of Canterbury, &c.

*Decree viis  
et modis.*

Whereas it hath been alleged before the Right Honourable Sir Herbert Jenner Fust, &c., on the part and behalf of Marie Josephine Piq, spinster, that Francois Achille Roziere Laporte, late of Corbeil, near the city of Paris, in the kingdom of France, deceased, having, &c., departed this life on or about the 28th day of September, 1841, having made and executed his last will and testament in writing, bearing date the 23rd day of January, 1840, and therein named Benjamin Lumley and Henry Broadwood, Esquire, executors, and the said Marie Josephine Piq, spinster, residuary legatee ; and whereas it was further alleged, that on the 4th day of May, instant, a decree issued, under seal of our said court, at the promotion of the said Marie Josephine Piq, spinster, whereby the said Benjamin Lumley and Henry Broadwood were to be cited to appear personally, or by their proctor or proctors, duly constituted, at the time and place therein mentioned, then and there to accept or refuse probate of the said will, or shew cause why letters of administration, (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased should not be committed and granted to the said Marie Josephine Piq, spinster, on giving the usual security ; and that on the 5th day of May, instant, and also on the 6th day of the said month, the mandatory or officer of our said court made diligent search and inquiry after the said Benjamin Lumley, at his usual place of abode, to wit,

No. 46, Parliament Street, in the city of Westminster, and on the 7th day of the said month, at the Opera House in the Haymarket, and again on that day, as also on the 10th and 11th days of the same month, at his said residence in Parliament Street, but could not meet with or get any information where he could see him so as personally to serve him with the aforesaid decree, and the said mandatory or officer certified that he verily believed that the said Benjamin Lumley was purposely avoiding the service thereof; and whereas our said master, keeper, or commissary, rightly and duly proceeding in the premises, hath, at the petition of the proctor of the said Marie Josephine Piquet, spinster, decreed the said Benjamin Lumley to be cited, intimated, and called to appear in judgment, on the day, at the time and place, in manner and form, and to the effect hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to cite, or cause to be cited, the said Benjamin Lumley, by shewing to him these presents under seal, if access can be had to him, and leaving with him a true copy hereof, otherwise by affixing these presents for some time on the outward door of his said place of residence in Parliament Street aforesaid, and leaving thereon affixed a true copy hereof, and also by affixing these presents for some time on one of the doors of the parish church of Saint Margaret, in the said city of Westminster, in which parish such his said residence is situate, and leaving thereon affixed a true copy thereof, and by all other lawful means and methods whereby you may or can, so that this our decree may most likely come to the hands,

possession, or knowledge of him, the said Benjamin Lumley, so cited personally, or by his proctor duly constituted, to appear before our said master, keeper, or commissary, his surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the third day after the service hereof, if the same be a general session, bye-day, caveat-day, or additional court-day of our said court, otherwise on the general session, bye-day, caveat-day, or additional court-day of our said court then next ensuing, at the hour of ten o'clock in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to accept or refuse probate of the said will, or shew good and sufficient cause, concludent in law, if he hath or knows any, why letters of administration, (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased should not be committed and granted to the said Marie Josephine Piq, spinster, on giving the usual security; and moreover that you intimate, or cause to be intimated, unto the said Benjamin Lumley, to whom we also intimate by the tenor of these presents, that if he doth not appear on the day, at the time and place, in manner and form, and to the effect aforesaid, or appearing doth not shew good and sufficient cause, concludent in law to the contrary, our master, keeper, or commissary aforesaid, his surrogate, or some other competent judge in this behalf, doth intend to proceed, and will proceed, to decree, grant, and commit letters of administration, (with the said will annexed,) of all and singular the goods, chattels, and credits of the said deceased to the

said Marie Josephine Piq, spinster, the absence or rather contumacy of him, the said Benjamin Lumley, in any wise notwithstanding ; and further, &c.

*Decree of Confrontation Viis et Modis.*

Decree of  
confrontation  
*viis et modis.*

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the whole province of Canterbury, greeting :

Whereas the Worshipful John Daubeney, Doctor of Laws, and our Surrogate, rightly and duly proceeding in a certain cause of divorce or separation from bed, board, and mutual cohabitation, by reason of adultery, now depending before us in judgment, by virtue of letters of request under the hand and seal of the Very Reverend Thomas Hill Lowe, Clerk, Master of Arts, Dean of the Cathedral Church of Saint Peter in Exeter, lawfully constituted, between George Savage Curtis, of the parish of East Teignmouth, in the county of Devon, and peculiar jurisdiction of the Venerable the Dean and Chapter of the Cathedral Church of Saint Peter in Exeter aforesaid, the party promoting the said cause, on the one part, and Emma Curtis, his lawful wife, of the same parish, county, and peculiar jurisdiction, the party accused and complained of, on the other part, hath, at the petition of the proctor of the said George Savage Curtis, alleging that on the 19th day of June, 1844, James Taylor, the mandatory in this behalf, had made diligent search and inquiry after the said Emma Curtis, with a design and intent to have served her

personally with the original decree of confrontation issued in this cause, if he could possibly have had free and safe access to her so to do, but that she, the said Emma Curtis, had so secreted or concealed herself that he could not serve her personally with the said decree, (as in and by a certificate endorsed on the said original decree of confrontation, and an affidavit in verification thereof duly made and sworn to by the said James Taylor, brought into and left in the registry of the said court, on reference being thereto had, will appear,) decreed the said Emma Curtis to be cited to appear on the day, at the time and place, to the effect, and in manner and form hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly charge and enjoin you, jointly and severally, peremptorily to cite, or cause to be cited, the said Emma Curtis, personally, if she can be so cited, and you can have safe and free access so to do, otherwise by publicly affixing this decree under seal for some time upon the outward door of the dwelling-house or last known place of residence of the said Emma Curtis, and also on the door of the parish church of Saint Marylebone, in the county of Middlesex, and by affixing and leaving publicly affixed on each of the said places a true copy hereof, and by all other better and more effectual ways, means, and methods whatsoever, so that this decree may most likely come to the knowledge of her, the said Emma Curtis, to appear personally before us, our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there,

on the 6th day of August, 1844, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to undergo a confrontation with divers credible witnesses to be in the said cause then and there produced and sworn; and further, &c.

*Certificate of Service.*

Certificate of service.

I certify that this decree, by ways and means, was duly executed the 2nd day of July, 1844, upon Thomas Poynter, Esquire, at No. 2, Great Knight Rider Street, Doctors' Commons, by shewing to him this original, under seal, and by leaving with him a true copy thereof; also by affixing this original, under seal, on the outward door of the dwelling house or the last known residence of the within named Emma Curtis, wife of George Savage Curtis, being No. 60, Beaumont Street, in the parish of Saint Marylebone, and by leaving thereon affixed a true copy hereof, and also by affixing this original, under seal, upon the outward door of the said parish church, and by leaving thereon affixed a true copy thereof.

JAMES TAYLOR.

The service of this decree having been effected in the mode designated therein, the same proceedings may be then taken upon it, as in the case of a personal service.

I have before referred to proceedings carried on *in paenam*: it only now remains to observe, that by one of the Orders of Court, witnesses may be produced and sworn before a surrogate in his chambers, as well



as in open court, but they cannot be repeated to their depositions until forty-eight hours at least have expired from the time of the production.

I will conclude by observing, that the ecclesiastical law distinguishes suits as plenary and summary. The former are those wherein the subject is one of personal complaint, and an issue, in the affirmative or negative, is therefore required from the party proceeded against. In this suit the proceedings are either by articles or libel. In the other, from the absence of personality in the action, no issue is required. Of the latter, testamentary cases are an example ; they are conducted by allegation, or act on petition, and are always summary.

There are also other technical but really unimportant differences between the assignments of a plenary and a summary suit, which may be more easily explained by the respective schemes.

### *Scheme of Assignations in a Plenary Criminal Cause.*

Puckle presented letters of request, under the hand and seal of the Worshipful John Haggard, Doctor of Laws, Vicar-General of the Right Reverend Father in God, John, by Divine permission, Lord Bishop of Lincoln, and Official Principal of the Consistorial and Episcopal Court of Lincoln, which the judge was pleased to accept, and to decree to proceed according to the tenor thereof.

Scheme of  
assignations  
in a plenary  
criminal  
cause.

Puckle exhibited proxy under the hand and seal of Frederick George Mastin, and returned decree personally served, and the certificate thereof was continued to the next court.

Glennie exhibited proxy under the hand and seal of the Reverend Thomas Sweet Escott, Clerk, the party cited, and prayed articles. Puckle brought in articles, with exhibit marked No. 1 annexed, on admission thereof next court.

The articles were admitted at petition of Puckle, Glennie not opposing the same, and he was assigned to answer thereto next court.

Glennie contested the suit negatively.

J. H. Bayford, on behalf of commissioner, returned commission for examination of witnesses, closely sealed. The surrogate, at petition of Puckle, directed the same to be opened for the purpose only of inspecting the return.

Puckle prayed publication. Glennie brought in his asserted allegation, on admission thereof the first session of Michaelmas Term.

Glennie prayed the allegation to be admitted. Puckle prayed the same to be rejected. The judge, having read the allegation, and heard advocates and proctors thereon, rejected the eleventh article and admitted the rest of the allegation, and assigned Puckle to give in his party's answers thereto the third session.

Glennie waived the personal answers of Puckle's party to the said allegation. Publication, at petition of both proctors, and all facts to be propounded the third session.

Glennie declared that he gave no exceptive allegation. The judge, at petition of both proctors, concluded the cause, and assigned the same for informations and sentence the first session of Hilary Term.

Puckle prayed the judge to pronounce that he had sufficiently proved the articles by him given in and ad-

mitted in this cause, on the part and behalf of Frederick George Mastin, his party, and that the Reverend Thomas Sweet Escott, Clerk, the party accused and complained of, hath acted contrary to law, in refusing to bury the corpse of Elizabeth Ann Cliff, spinster, in the said articles mentioned, and that he may be duly punished and corrected according to the exigency of the law, and be also condemned in costs. Glennie prayed the judge to pronounce that Puckle had failed in proof of the articles given in and admitted in this cause on the part and behalf of Frederick George Mastin, his Puckle's party, and to dismiss the said Reverend Thomas Sweet Escott, Clerk, his party, from this suit and from all further observance of justice therein, and to condemn the said Frederick George Mastin in costs. The judge, having heard some informations of counsel, assigned the cause for further informations and sentence on Saturday, the 30th instant.

The judge, having maturely deliberated by interlocutory degree, having the force and effect of a definitive sentence in writing, pronounced that Puckle had sufficiently proved the articles by him given in and admitted in this cause, on the part and behalf of Frederick George Mastin, his (Puckle's) party, and that the Reverend Thomas Sweet Escott, clerk, Glennie's party, the party accused and complained of, hath acted contrary to law in refusing to bury the corpse of Elizabeth Ann Cliff, spinster, in the said articles mentioned, and that he hath thereby incurred the penalties of the canon in that case made and provided, and that the said Reverend Thomas Sweet Escott, clerk, Vicar of the Vicarage and Parish Church of Gedney, in the county

and diocese of Lincoln, and province of Canterbury, be accordingly suspended for the space of three months, from the time of the publishing of the said suspension, for that purpose, from all discharge and functions of his clerical offices, and the execution thereof; and did suspend him, the said Reverend Thomas Sweet Escott, accordingly, and did condemn him in the costs of this suit, present Glennie, who with all due reverence protested of a grievance, and of appealing, and instantly appealed. He was assigned to prosecute his appeal the first session of Trinity Term.

### *Scheme of Assignations in a Civil Cause.*

Scheme of  
assignations  
in a civil  
cause.

Townsend exhibited a proxy from Edward Tongue, Esquire, his party, and cited citation; F. Slade then appeared for Mary Ann Allen, the party cited, and exhibited a proxy from her, and prayed a libel, whereupon Townsend was assigned to libel next court.

Townsend brought in libel and three exhibits, and the judge assigned to hear on admission thereof, the first session of next Term.

The libel and exhibits were admitted, F. Slade not opposing same, and he then confessed the marriage as pleaded, but otherwise contested the suit negatively, whereupon Townsend was assigned to prove.

Publication of the evidence was decreed at the petition of Townsend; F. Slade declared he should not give any allegation, unless exceptive to the testimony of witnesses, and the judge assigned to hear on admission of such exceptive allegation, if any, on the next court.

F. Slade declared he gave no exceptive allegation, and at his petition the judge allotted the sum of seventy-five pounds per annum, as alimony, pending suit, to be computed from the return of the citation; and at Townsend's petition concluded the cause, and assigned the same for informations and sentence the bye-day.

F. Slade acknowledged the receipt of costs and alimony; Townsend porrected a definitive sentence in writing, which for his party he prayed the judge to read, sign, promulge, and give; F. Slade prayed the judge to pronounce that Townsend had failed in proof of the libel and exhibits, admitted in this cause, and to dismiss his party from this suit and all further observance of justice herein; the judge having read the proofs, and heard advocates and proctors on both sides, took time to deliberate.

F. Slade acknowledged the receipt of further costs and alimony; the judge having already heard informations and deliberated thereon, by interlocutory decree pronounced that Townsend had failed in proof of his libel and exhibits, and dismissed Mary Ann Tongue, F. Slade's party, from this suit, and all further observance of justice therein.

*Scheme of Assignations in a Summary Cause, by Allegation.*

Smale appeared for Ellen Elwyn, (wife of William Brame Elwyn, Esquire,) and exhibited proxy under the hand and seal of the said Ellen Elwyn, his party, and also of the said William Brame Elwyn, and alleged her to be the sole executrix named in the last will and tes-

Scheme of assignations in a summary cause, by allegation.

tament of the said deceased, and that she had been duly sworn and prayed probate.

Pitcher appeared for John Thomas, and prayed time to set forth his client's interest, which he was assigned to do within three days from this day, otherwise probate was decreed to Smale's party.

Pitcher appeared for Eliza M'Queen, (wife of James M'Queen, Esquire,) and alleged her to be the lawful niece and next of kin of the party deceased.

Smale brought in affidavit of his party as to scripts, with scripts annexed marked respectively A, B, C, D, E, Nos. 1, 2, 3, 4, and 5; also notarial copies of the said script C and No. 4, marked respectively C A, and No. 4 B, and notarial attestation thereof. Smale was assigned to answer to Pitcher's client's interest on the fourth session, and Pitcher to exhibit proxy and bring in affidavit of his party as to scripts same time.

Pitcher alleged that he proceeded no further on behalf of Eliza M'Queen, (wife of James M'Queen, Esquire,) his party; and he then exhibited a proxy under the hands and seals of Charles Deare, Esquire, and Thomas Mayhew, Esquire, and alleged them to be the executors named in the true and original last will and testament of Peter Rainier, Esquire, the party in this cause, deceased, bearing date the 26th day of January, 1836, and now remaining in the registry of this court, annexed to the affidavits as to scripts of Ellen Elwyn, (wife of William Brame Elwyn, Esquire.) Smale's party marked (C), and opposed the script marked (A).

Smale propounded same, and asserted an allegation which he then brought in, and which was admitted at his petition.

Pitcher was assigned to exhibit affidavit as to scripts the caveat-day.

Pitcher exhibited affidavit of Charles Deare and Thomas Mayhew, his parties, as to scripts, and asserted an allegation: on admission thereof the second session,

Smale was assigned to exhibit an inventory same time.

Smale brought in declaration, instead of an inventory, on oath, of his party; and the judge, at petition of Pitcher, continued the assignation on him to bring in his asserted allegation to the third session.

The allegation was admitted, at petition of Pitcher, Smale not opposing the same.

Smale was assigned to give in his client's answers to his said allegation, and also the answers of William Brame Elwyn, Esquire, the husband of his said party within a fortnight from this day.

Appeared personally, Ellen Elwyn, (wife of William Brame Elwyn,) also the said William Brame Elwyn, and produced themselves for their personal answers to Pitcher's allegation bearing date the first session of Hilary Term, to wit, the 17th day of January, 1838, given in and admitted in this cause, and were sworn as usual; and they then brought in their said answers in writing, subscribed with their respective names, and acknowledged the subscription thereto to be of their respective handwriting; that they well knew the contents of the said answers, and that they were all true, in virtue of the oath by them taken.

Wadson, on behalf of the commissioners, returned requisition and commission for the examination of witnesses closely sealed up. Present, Smale, at whose petition the surrogate decreed the same to be opened

for the purpose only of inspecting the return. The rest of the assignation was continued to the first session of Michaelmas Term.

Smale alleged his clients answers to be in the registry. Both proctors then alleged they gave no further allegations, unless exceptive to the testimony of witnesses. Publication was decreed, and the cause assigned for sentence on the first assignation, the caveat-day, the 21st instant, and on admission of exceptive allegations, if any, the same time.

Both proctors declared they gave no exceptive allegations, and the cause was assigned for sentence on the second assignation and for informations the third session, at petition of both proctors.

Smale prayed the judge to pronounce for the force and validity of the true and original last will and testament of Peter Rainier, Esquire, the party deceased in this cause, bearing date the 17th day of September, 1837, now remaining in the registry of this court, marked with the letter A, annexed to an affidavit as to scripts of Ellen Elwyn, (wife of William Brame Elwyn, Esquire,) his (Smale's) party, the sole executrix thereof, appointed and propounded by him, Smale, on the part and behalf of his said party, and to decree probate thereof to his said party accordingly, and to condemn Pitcher's parties in the costs of this suit. Pitcher prayed the judge to pronounce against the force and validity of the said pretended last will and testament of the said Peter Rainier, the deceased in this cause, bearing date and marked and propounded by Smale as aforesaid, and to decree probate of the true and original last will and testament of the said deceased, bearing date the 26th day of January, 1836, also remaining in the registry of



this court, annexed to the said affidavit, and marked with the letter C, as the said will originally stood, without the alterations since written and made in pencil, as now appears therein, to Charles Deare, Esquire, and Thomas Mayhew, Esquire, his, the said Pitcher's, parties, the executors therein named, and to condemn the said Ellen Elwyn and William Brame Elwyn, her husband, in the costs of this suit. The judge, having heard informations and counsel thereon, assigned the cause for sentence on Thursday next, the 14th instant, at petition of both proctors.

The judge having maturely deliberated, by his final interlocutory decree, having the force and effect of a definitive sentence in writing, at the petition of Smale, pronounced for the force and validity of the true and original last will and testament of Peter Rainier, Esquire, the deceased in this cause, bearing date the 17th day of September, 1837, now remaining in the registry of this court, annexed to the affidavit of scripts of Ellen Elwyn, (wife of William Brame Elwyn,) and propounded by Smale on behalf of the said Ellen Elwyn, his party, the sole executrix thereof appointed, and decreed probate of the said will to be granted to her accordingly. Present, Pitcher, at whose petition the judge directed the probate not to issue under seal until after fifteen days.

*Scheme of Assignations in a Summary Cause, by  
Act on Petition.*

Blake exhibited proxy under the hand and seal of the said Charles Henfrey, his party, and brought in decree,

Scheme of  
assignations  
in a sum-

mary cause,  
by act on pe-  
tition.

present Cox, who appeared for Mary Ann Henfrey, widow, the party cited, and exhibited proxy under the hand and seal of his said party, and in obedience to the said decree, brought in administration (will.) Both proctors were then assigned to exhibit affidavits of scripts of their respective parties the first session of next term.

Blake returned requisition with affidavit of the said Charles Henfrey, his party, as to scripts with scripts marked A and B annexed. Cox exhibited affidavit of his party as to scripts, and he was then assigned to declare whether he opposed said script A the second session.

Cox declared he opposed script marked A, present Blake, who was assigned to declare whether he would propound the same the third session.

Blake prayed to be heard on his petition, and he was assigned to deliver his act to Cox the fourth session.

Blake alleged that he had delivered the act to Cox, present Cox, who was assigned to return the same to Blake within a week from that date.

Both proctors brought in act sped, whereupon the judge assigned to hear his pleasure thereon at petition of both proctors, whensoever.

Both proctors alleged and prayed as by them alleged and prayed in act of court. The judge, having read the said act on petition, and proofs, and heard advocates and proctors thereon on both sides, by interlocutory decree, rejected Blake's petition and confirmed the letters of administration, (with will annexed,) heretofore issued under seal of the said court, and directed the said letters of administration, (with will annexed,)

to be delivered out of the registry of the said court to Cox, for the use and benefit of his party, but not before fifteen days from that day.

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### ORDERS OF COURT.

By the 10th Geo. IV., c. 53, sec. 9, the judges for the time being of the Court of Arches, the Prerogative Court, and the Court of Peculiars, and also of the Consistory and Commissary Courts of London, are empowered "to make orders of court for expediting and regulating the proceedings in their several courts."

Under such authority, the following orders of court have been made :—

#### *Orders of Court to serve as General Rules of Practice made on the First Session of Easter Term, 1827.*

That on the first session of every Hilary, Easter, and **First.** Michaelmas Terms, publication shall pass on all pleas given in and admitted on or before the bye-day of the Term preceding, unless upon such first session cause be shewn to the satisfaction of the court for extending the term probatory; provided that nothing herein contained shall preclude the court from assigning a short term probatory, or prevent the party giving the plea from sooner praying publication.

- Second.** That a party intending to counterplead shall assert his allegation the court-day on which the term probatory expires, and shall bring it in on the following court-day, unless on that day cause be shewn to the satisfaction of the court for allowing further time for bringing in such allegation.
- Third.** That upon answers being prayed, the proctor praying the answer shall forthwith take out a decree, and shall cause the same to be duly served without delay on the adverse party in the cause, so as to put such party in contempt, in case the decree shall not be obeyed within a reasonable time; provided that the examinations of witnesses shall not be delayed, nor the publication be postponed, in order to wait for the answers; but publication shall pass as aforesaid, unless, upon application being made to postpone the publication, it shall appear to the satisfaction of the court that due diligence had been used in taking out and enforcing the decree for answers.
- Fourth.** That when application is intended to be made for extending the time in any case, notice thereof in writing, and of the grounds on which the application is to be made, shall be given to the adverse proctor, and delivered into the registry three days before the making of such application.
- Fifth.** That any neglect or delay in bringing in answers, or in other proceedings, shall be matter of consideration in respect to costs, either immediate or at the end of cause.

**J. NICHOLL, Dean.**

*Orders of Court made the Fourth Session of  
Hilary Term, 13th February, 1830.*

That all court-days appointed as sessions and bye-  
days in each term for the Courts of Arches and Peculiars and for the Prerogative Court, shall each of them be reciprocally considered and taken to be regular court-days for the despatch of all business in each and every of the said courts, and that so many additional court-days, in and after each and every term, shall be from time to time appointed as may be deemed and considered necessary for the despatch, and such additional court-days shall be to all intents and purposes regular court-days. First.

That all days which shall be appointed as caveat-days in the Prerogative Court, shall be regular court-days for expediting all proceedings in that court, and likewise in the Courts of Arches and Peculiars. Second.

That when a party shall have been duly cited, and shall not appear on the day assigned for his appearance, such party shall be pronounced in contempt, and the proceedings shall, on the following court-day and afterwards, be carried on in pain of his contempt. Third

That where proceedings are carried on *in pœnam contumaciæ*, witnesses may be produced and sworn before a surrogate in his chambers as well as in open court, and such production shall be immediately entered and recorded in the register-book, but the witness so produced shall not be repeated to his deposition until within forty-eight hours at least shall have expired from the time of his production. Fourth.

Fifth.

That the proctor of a party taking out a citation or other process shall, on the day of its return, be prepared to exhibit his proxy and to proceed in the cause by taking the first step therein, according to the nature of the proceedings.

Sixth.

That any party who shall have been served with a citation or other process to appear, and who shall appear on the day assigned therein, shall be dismissed with his costs, unless the party taking out such citation or process shall return the same and be prepared to proceed in the suit, for which costs the proctor taking out such citation or other proof shall be liable.

Seventh.

That a proctor appearing for a party cited shall be prepared with his proxy, and shall exhibit the same on entering such appearance.

Eighth.

That the proctor of a defendant in a matrimonial cause shall admit or deny the fact of marriage, under pain of suspension, on the same day that the plea alleging the marriage is admitted.

Ninth.

That if the party giving in any allegation shall require the answers of the adverse party, he shall, on the day on which his plea is admitted, apply to the court to assign a time for bringing in such answers; and unless the answers shall be brought in at or before the time assigned, the facts pleaded shall be taken, *pro confesso*, as against the party so neglecting to give in his answers.

Tenth.

That the expense of taking depositions to prove facts confessed in answers, or admitted in acts of court, if taken after such confessions or admissions, shall be paid by the party producing the witnesses, unless the court shall think fit to direct otherwise.

That in all cases the court may extend the time, upon reasonable excuse shewn. Eleventh.

That when any exhibits are pleaded in supply of proof, the proctor of the adverse party shall, on the day on which the plea is admitted, declare whether he confesses or denies the handwriting, as pleaded, of such exhibits, and if the handwriting be denied and afterwards proved, the costs occasioned by the proof shall be paid by the party who denied the handwriting, unless the court shall think fit to direct otherwise. Twelfth.

That in all cases the court may, upon application made to it, direct security for costs to be given by either or all of the parties. Thirteenth.

## A P P E A L S.

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A PARTY considering himself aggrieved by the sentence or interlocutory order of the judge who has entertained his cause in the first instance, has a right, by the canon and civil law, to appeal or resort to a higher tribunal for relief and protection. In England, appeals are substantially regulated by the 24 Hen. VIII, c. 12. That statute enacts, that in all causes ecclesiastical the final decision shall be of the king's authority, but that the first appeal in every such cause shall lie from the sentence of the archdeacon to his diocesan, from the diocesan to the archbishop of the province, and from the archbishop to the king.

But the appeal from a royal peculiar is made at once to the king (*a*) ; and from the peculiar court of a dean and chapter, or a commissary, the appeal lies to the metropolitan, in his Court of Arches (*b*).

In the same manner, if the judge of the subordinate and diocesan court be the same person, the appeal is then made, *per saltum*, to the metropolitan (*c*).

The appeals to the king are now regulated by the 2 and 3 Will. IV., c. 92 ; 3 and 4 Will. IV., c. 41 ; 6 and 7 Vict., c. 38 ; and 7 and 8 Vict., c. 69.

(*a*) Parham v. Templar, Phill. 3, pp. 223—255. Burgoyne v. 3, pp. 245—6. Millar v. Bloom- Free, Add. 2, p. 465.  
field and Slade, Add. 1, p. 499. (*c*) Beare and Biles v. Jacob,  
(*b*) Parham v. Templar, Phill. Hagg. 2, pp. 257—522.



By the third section, 2 and 3 Will. IV., c. 92, (entitled "An Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to His Majesty in Council,") it is provided "that appeals be made to the king in council, and that the king, his heirs, and successors, in council, shall have power to proceed to hear and determine every appeal and suit made by virtue of that act, and to make all such judgments, orders, and decrees, in the matter of such appeal or suit, as might theretofore have been made by His Majesty's Commissioners or Court of Delegates, and that every such judgment, order, and decree shall have the like force and effect, in all respects, as the same respectively would have had if made and pronounced by the Court of Delegates, and that every such judgment, order, and decree shall be final and definitive, and that no commission shall be granted to review any judgment or decree."

By the 3 and 4 Will. IV., c. 41, (entitled "An Act for the better Administration of Justice in His Majesty's Privy Council,") it is provided, (s. 1,) "that the President for the time being of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as shall from time to time hold any of the following offices, viz.:—the office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice of the Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the

Court of Bankruptcy; and also all persons, members of His Majesty's Privy Council, who shall have been president thereof, or held the office of Lord High Chancellor of Great Britain, or shall have held any of the other offices before mentioned, shall form a committee of His Majesty's Privy Council, styled the Judicial Committee of the Privy Council."

By the third section of the same act it is provided "that all appeals shall be referred by the King to the Judicial Committee, to be heard by them, and that a report or recommendation thereon shall be made to the King in Council for his decision thereon."

By the fifth section of the same act it is provided "that no matter shall be heard, nor shall any order, report, or recommendation be made by the Judicial Committee, unless in the presence of at least four members of the said committee, and that no report or recommendation shall be made to His Majesty, unless a majority of the members of such Judicial Committee, present at the hearing, shall concur in it."

By the seventh section of the same act it is provided "that it shall be lawful for the Judicial Committee, in any matter which shall be referred to it, to examine witnesses by word of mouth, (and either before or after examination in the usual course,) or to direct that the depositions of any witness shall be taken in writing by the registrar of the Privy Council, or by such other person or persons, and in such manner, order, and course as His Majesty in Council, or the Judicial Committee shall appoint, and that the said registrar and such other person or persons, so to be appointed, shall have the same powers as are possessed by an examiner of the Court of Chancery or of any Ecclesiastical Court."

The eighth section of the same act provides "that in any matter which shall come before the Judicial Committee, it shall be lawful for the said committee to direct that such witnesses shall be examined or re-examined, and as to such facts as to the said committee shall seem fit, notwithstanding any such witness may not have been examined, or no evidence may have been given on any such facts, in a previous stage of the matter; and that it shall also be lawful for His Majesty in Council, on the recommendation of the said committee, upon any appeal, to remit the matter which shall be the subject of such appeal to the court below, and at the same time direct that such court shall rehear such matter in such form, and generally or upon certain points only, and upon such re-hearing take such additional evidence, though before rejected, or reject such evidence, before admitted, as His Majesty in Council shall direct."

The ninth section provides "that every witness shall give his evidence upon oath, or if a Quaker or Moravian, upon solemn affirmation, to be administered by the Judicial Committee and registrar, and by such other person or persons as His Majesty in Council, or the Judicial Committee shall appoint."

The tenth section provides "that it shall be lawful for the Judicial Committee to direct one or more feigned issues or issue to be tried in any court of common law."

The nineteenth section gives the President power to issue writs, in the same form or as nearly as may be, as that of the *subpœna ad testificandum*, or *duces tecum*, in the King's Bench.

The 6 and 7 Vict., c. 38, confirms and extends the powers of the Judicial Committee and their surrogates, in many respects. The seventh section of that act provides "that Her Majesty in Council and the Judicial Committee, and their Surrogates, shall have the same powers, by attachment and committal of the person to any of Her Majesty's gaols, and subsequent discharge of any person so committed, as by any statute, custom, or usage, belong to the Judge of the High Court of Admiralty;" and the following section further enacts, "that in all causes of appeal in which any person duly monished or cited, or required to comply with any lawful order or decree of Her Majesty in Council, or of the Judicial Committee and their Surrogates, and neglecting or refusing to pay obedience thereto, or committing any contempt of the process under seal of Her Majesty in ecclesiastical and maritime causes, shall reside out of Her Majesty's dominions, or shall have privilege of peerage, or shall be a lord of Parliament, or a member of the House of Commons, it shall be lawful for the Judicial Committee or their Surrogates to pronounce such person to be contumacious and in contempt, and after he shall have been so pronounced contumacious and in contempt, to cause process of sequestration to issue against the real and personal estate, goods, chattels, and effects, wheresoever lying, within the dominions of Her Majesty, of the person against or upon whom such order or decree shall have been made, in order to enforce obedience to the same, and payment of the expenses attending such sequestration and all proceedings consequent thereon, and to make such further order in respect of or consequent on

such sequestration, and in respect to such real and personal estate, goods, chattels, and effects sequestrated thereby as may be necessary, or for payment of monies arising from the same to the person to whom the same may be due, or into the registry of the High Court of Admiralty and Appeals, for the benefit of those who may be ultimately entitled thereto. The twelfth section gives the Judicial Committee the power of awarding costs generally, whether arising from the appeal, or incurred in the court below."

The 7 and 8 Vict., c. 69, in the ninth section, enacts "that in case any petition of appeal shall be presented, addressed to Her Majesty in Council, and such petition shall be duly lodged with the Clerk of the Privy Council, it shall be lawful for the Judicial Committee to proceed in hearing and reporting upon such appeal, without any special order in council referring the same to them, provided that Her Majesty in Council shall have, by an order in council in the month of November, directed that all appeals shall be referred to the Judicial Committee, on which petitions may be presented to Her Majesty in Council during the twelve months next after the making of such order; and that the Judicial Committee shall proceed to hear and report upon all such appeals, in like manner as if each such appeal had been referred to the Judicial Committee by a special order of Her Majesty in Council.

The twelfth section extends the power of sequestration over the estates of *all* persons who have been pronounced in contempt.

The legal effect of an appeal is to suspend the sentence of the court below, by carrying the original cause before a new jurisdiction, in whose discretion it will be,

provided the appeal is duly prosecuted to a hearing and sentence, to affirm or reverse the decision of the inferior judge (*d*).

Appeals are either from a sentence, or from an interlocutory order or grievance, and according as they are one or the other a material difference, as I will afterwards shew, exists in the conduct of the cause.

The right of appeal may be barred or perempted by lapse of time (*e*) or acquiescence in the sentence appealed from, and also by acts done in furtherance of it, such as attending the taxation of costs (*f*). Praying the judge to rescind an order perempts any after appeal from it (*g*). The omission to engross the instrument of appeal on a five-shilling stamp, as required by the 55 Geo. III., c. 184, schedule, part 1, and 5 Geo. IV., c. 41, schedule, part 2, is fatal to the validity of the appeal (*h*).

By 24 Hen. VIII., c. 12, s. 6, 7, the appeal must be made "within fifteen days next ensuing the judgment or sentence given," but the day on which such judgment or sentence is given is included therein (*i*).

It may be made either in the presence of the judge, verbally, or before a notary and two witnesses, out of court; *i. e.*, either judicially or extra judicially. In the first case, the party or his proctor, immediately on the making of the order which is the subject of complaint, addresses the judge, *viva voce*, in words to the following

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| ( <i>d</i> ) Loveden v. Loveden, Phill.<br>1, p. 208.          | ( <i>g</i> ) Greg v. Greg, Add. 2,<br>p. 276.              |
| Blyth v. Blyth, Add.<br>1, p. 312.                             | ( <i>h</i> ) Smyth v. Smyth, Hagg.<br>R. 4, p. 72.         |
| ( <i>e</i> ) Schultes v. Hodgson, Add.<br>1, p. 105.           | ( <i>i</i> ) Lloyd and Clarke v. Poole,<br>3 Hagg. p. 481. |
| ( <i>f</i> ) Lloyd and Clarke v. Poole,<br>Hagg. R. 3, p. 482. |  |

effect :—" With due reverence, I protest of a grievance and of appealing therefrom, and I do hereby appeal."

This appeal is considered to be made in the Acts of Court, (*apud acta*), is entered by the registrar in the assignation book, and an official copy of the minute is evidence of an appeal to the superior court.

The appeal *apud acta* is used in the case of interlocutory orders, such as the admission of a libel or allegation, &c., in order to prevent a further order being made thereon, such as an assignation to answer, &c.

In the other appeal, which is the usual course of proceeding, the proctor of the complaining party appears before a notary and two witnesses, or two notaries, and having stated the specific grievance, which is denominated the *præsertim*, appeals to the superior court.

This appeal is contained in an instrument, and is attested by the notary and witnesses.

### *Instrument of Appeal to the Arches Court.*

In the name of God, amen. Before you the notary public subscribed, and witnesses of good faith and credit, here present, I, George Buckton, of Doctors' Commons, London, also Notary Public, and one of the Procurators-General of the Arches Court of Canterbury, do exhibit, as proctor, and make myself a party for the Right Reverend Father in God, Bowyer Edward, by Divine permission, Lord Bishop of Ely, the alleged impropiator or proprietor of a portion of the great tithes annually arising and renewing in the parish of Clare, in the county of Suffolk, diocese of Norwich, and province of Canterbury, and with a design and intent to appeal from and complain of all and singular the nullities, ini-

Appeal to  
the Arches  
Court.

quities, injustices, injuries, errors, and grievances in the proceedings hereinafter mentioned, and equally and alike principally complaining of them, and every of them, by this writing, say, allege, and in law propound, that a certain cause or business of the promotion of the office of the judge was lately depending in judgment in the Episcopal and Consistorial Court of Norwich, held at Norwich, before the Right Reverend Father in God Henry, by Divine permission, Lord Bishop of Norwich, or before the Worshipful William Younge, Clerk, Master of Arts, Vicar-General of the said Lord Bishop of Norwich, and Official Principal of the said Episcopal and Consistorial Court of Norwich, promoted by Samuel Gibbons and Samuel Goody, churchwardens of the parish and parish church of Clare, in the county of Suffolk, and diocese of Norwich, (voluntary promoters of the said office,) against the said Right Reverend Father in God, Bowyer Edward, by Divine permission, Lord Bishop of Ely, the alleged impropiator or proprietor of a portion of the great tithes annually arising and renewing in the said parish of Clare, to answer the defaults found in the chancel of the parish church of Clare aforesaid; that the said Worshipful William Younge, Clerk, Master of Arts, the pretended judge aforesaid, unduly and unjustly proceeding in the said cause or business, and, (saving all reverence due to him,) too much favouring the said Samuel Gibbons and Samuel Goody, more than by law he ought, and not in the least regarding the requisite and just forms of law and judicial proceedings, but against the said Lord Bishop of Ely acting in all things nully and unjustly, as well by virtue of his pretended office, as at the unjust instance, instigation, solicitation, petition, and



procurement of the said Samuel Gibbons and Samuel Goody, or their proctor, did, in fact, though unduly, on or about the 9th day of March, 1830, overrule the objections taken on behalf of the said Lord Bishop of Ely to the personal answers of the aforesaid Samuel Gibbons and Samuel Goody to the several positions or articles of a certain libel given in and admitted in the said cause or business, on the part and behalf of the said Lord Bishop of Ely, and did admit and decree the said answers to be full and sufficient, notwithstanding the same were both redundant and insufficient, to the manifest injury of justice, and to the very great prejudice of the said Lord Bishop of Ely: wherefore I, the said George Buckton, the proctor aforesaid, looking upon and believing my said party to be very much injured and aggrieved by all and singular the grievances, nullities, iniquities, injustices, and errors in proceedings done to and inflicted upon my said party in the said cause, and fearing that my said party may be further injured and aggrieved, have rightly and duly appealed from them, and every of them, and more especially from the said pretended judge having, on the 9th day of March, 1830, in fact, though unduly, overruled the objections taken on behalf of the said Lord Bishop of Ely to the personal answers of the aforesaid Samuel Gibbons and Samuel Goody to the several positions or articles of the said allegation given and admitted in the said cause or business, on the part and behalf of the said Lord Bishop of Ely, and having admitted and decreed the said answers to be full and sufficient, notwithstanding the same were both redundant and insufficient, and ought not to have been admitted therein, and from everything following and

arising therefrom, to the Arches Court of Canterbury, and to the Official Principal thereof, and do equally and alike principally complain of all and singular the nullities, iniquities, injustices, injuries, and errors in the proceedings before mentioned, and do three times severally and most earnestly pray letters dismissory, in this behalf, to be made out and delivered to me or my said party; and lastly I do reserve power to myself of correcting and reforming this my appeal and complaint, by adding or subtracting therefrom, and reducing the same into a better and more competent form, and of intimating the same to any person whom by law I ought, or the law shall require, and counsel advise, at time and place convenient, according to law, style, and custom.

Upon all and singular which premises the said George Buckton required of me, the undersigned Notary, to draw for him one or more public instrument or instruments, and the witnesses subscribed to attest the same.

This appeal was made and interposed on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, in the office of A. B., in Doctors' Commons, London, by the said George Buckton, the procurator aforesaid, who then and there appealed, protested, prayed letters dismissory, and did in all things as in the aforewritten appeal is contained, there being then and there present with me, the notary public subscribed, C. D., and E. F., literate persons, specially required and desired to testify the same, which I attest.

A. B., Notary Public.

Witnesses,

C. D.

E. F.

*Instrument of Appeal to Her Majesty in Council.*

In the name of God, amen. Before you, the Notary Public subscribed, and witnesses of good faith and credit here present, I Richard Addams, of Doctors' Commons, London, also Notary Public, and one of the Procurators-General of the Arches Court of Canterbury, do exhibit, as proctor, and make myself a party for John Scott, Esquire, the natural and lawful brother and only next of kin of Christopher Scott, formerly of Saint Andrew's, in the province of New Brunswick, but late of Blackhouse, near Greenock, in North Britain, but at Tower Hill, in the city of London, Esquire, deceased, and with a design and intent to appeal from and complain of all and singular the nullities, iniquities, injustices, injuries, errors, and grievances in the proceedings hereinafter mentioned, and equally and alike principally complaining of them and every of them, by this writing say, allege, and in law propound, that a certain cause or business of granting letters of administration of all and singular the goods, chattels, and credits of the said Christopher Scott, formerly of Saint Andrew's, in the province of New Brunswick, late of Blackhouse, near Greenock, in North Britain, but at Tower Hill, in the city of London, Esquire, deceased, was lately depending before the Right Honourable Sir John Nicholl, Knight, Doctor of Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, howsoever constituted, between the said John Scott, Esquire, the natural and lawful brother, only next of kin, and one of the parties entitled in distribution of the personal estate and effects of the said deceased, in

Instrument  
of Appeal to  
Her Majesty  
in Council.

case he shall be pronounced to have died intestate, the party promoting the said cause or business, on the one part, and William Scott, the sole executor named in a pretended will of the said deceased, bearing date the 20th day of July, in the year 1833, the party against whom the said cause or business was promoted, on the other part; that the said John Nicholl, Knight, the judge aforesaid, unduly and unjustly proceeding in the said cause, did, on the 16th day of July, in the present year 1834, sign, promulge, and give a definitive sentence in writing, wherein and whereby he pronounced for the force and validity of the said pretended will, and decreed probate thereof to be granted and committed to the said William Scott, the sole executor therein named, and further condemned the said John Scott in costs from the time of giving in his allegation: wherefore I, the said Richard Addams, the procurator aforesaid, looking upon and believing my said party to be much injured and aggrieved by all and singular the nullities, injustices, and injuries of the said judge, as before mentioned, as well by virtue of his office, as at the unjust instigation, solicitation, procurement, and petition of the said William Scott or his proctor, and justly fearing that his said party may be further injured and aggrieved thereby, have, in due time and place, rightly and duly appealed from them and every of them, and more especially from the said judge pronouncing for the force and validity of the said pretended will, and decreeing a probate thereof to be granted and committed to the said William Scott, the sole executor therein named as aforesaid, and condemning the said John Scott in costs as aforesaid, and from everything following and arising therefrom; and do

equally and alike principally complain of them, and every of them, to our sovereign lord the king in council, and do three times severally and most earnestly pray letters dismissory, in this behalf, to be made out and delivered to me or my said party; and lastly I do reserve power to myself of correcting and reforming this my appeal and complaint, by adding thereto or subtracting therefrom, and reducing the same into a better or more competent form, and of intimating the same to any person whom by law I ought, or the law shall require and counsel advise, at time and place convenient, according to law, style, and custom.

Upon all and singular which premises the said Richard Addams required of me, the undersigned notary, to draw for him one or more public instrument or instruments, and the witnesses subscribed to attest the same.

This appeal was made and interposed on Monday, the 21st day of July, in the year of our Lord 1834, in the office of Richard Addams, in Doctors' Commons, London, by the said Richard Addams, the procurator aforesaid, who then and there appealed, protested, prayed letters dismissory, and did in all things as in the aforewritten appeal is contained, there being then and there present with me, the notary public subscribed, Samuel Brooks and William Henry Willett, literate persons, specially required and desired to testify the same, which I attest.

A. B., Notary Public.

Witnesses,

C. D.

E. F.

The next step, after the act of appealing, is to produce the instrument of appeal or an official copy of the act of court, if it is contained in the latter, before a surrogate of the appellate court, and pray an inhibition and citation against the court below and its officers, and also the other party, who is called the respondent or party appellate.

The inhibition and citation at present in use is one instrument only.

### *Inhibition and Citation.*

Inhibition  
and citation.

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the whole province of Canterbury, greeting :

Whereas it hath been alleged, before the Worshipful John Daubeney, Doctor of Laws, and our Surrogate, by the proctor of the Reverend George Arthur Evors, of the diocese of Saint Asaph, and province of Canterbury, Clerk, that a certain pretended cause or business of bringing in, exhibiting, and leaving in the registry of the court of the Lord Bishop of Saint David's, the true, whole, and original last will and testament of Robert Reid, late of the town of Tenby, in the county of Pembroke, and diocese of Saint David's, bachelor, deceased, and proving the same in solemn form of law, and further of shewing cause, if he had any, why he the said George Arthur Evors, should not, upon his corporal oath, state, declare, and disclose what became or is become of the said last will and testament of the

said Robert Reid, deceased, if the same is not now in his custody or power, or in the custody or power of some person or persons in trust for him, or on his account or behalf, was lately depending before the Reverend David Archard Williams, Clerk, Surrogate to the Worshipful Augustus Pechell, Esquire, Master of Arts, Vicar-General, and Official Principal of the Right Reverend Father in God, Connop, by Divine permission, Lord Bishop of Saint David's, between Mary, otherwise Sarah, Callan, single woman, alleging herself to be one of the legatees named in the said will, the party promoting the said pretended cause or business, on the one part, and the said Reverend George Arthur Evors, Clerk, the party against whom the said pretended cause or business was promoted, on the other part, and who is therein falsely alleged to be an executor named in the said will; and whereas it was further alleged, that the said Reverend David Archard Williams, the surrogate aforesaid, howsoever constituted, unduly and unjustly proceeding, as well by virtue of his pretended office, as at the unjust instance, instigation, solicitation, procurement, and petition of the said Mary, otherwise Sarah Callan, or her proctor, did, in fact, though unduly, on the 9th day of June, in the present year 1842, interpose his order or decree, whereby he admitted a certain pretended allegation in writing, given on the part and behalf of the said Mary, otherwise Sarah, Callan, and bearing date Thursday, the 12th day of May, in this said present year 1842. That from the said order or decree, and from all and everything arising or following therefrom, and from all other nullities, iniquities, injustices, injuries, grievances, and errors in proceeding, and

other acts and facts that may or shall be collected from the proceedings of the said Reverend David Archard Williams, the surrogate aforesaid, the said Reverend George Arthur Evors, hath, in due time and place, appealed to the said Arches Court of Canterbury, and to us, the official principal thereof, as aforesaid. And whereas our said surrogate, rightly and duly proceeding, hath, at the petition of the proctor of the said Reverend George Arthur Evors, decreed the inhibition and citation hereunder written, (justice so requiring.) We do, therefore, hereby empower and strictly enjoin and command you, jointly and severally, peremptorily to inhibit, or cause to be inhibited, the said Reverend David Archard Williams, Clerk, Surrogate to the Worshipful Augustus Pechell, Esquire, Master of Arts, Vicar-General and Official Principal aforesaid, or other the surrogate or surrogates of the said Augustus Pechell, his registrar or actuary, and the said Mary, otherwise Sarah, Callan, in special, and all others in general, who ought by law to be inhibited in this behalf, (each and every of whom we do, by virtue of these presents, so inhibit,) that they neither, any nor either of them do innovate, or attempt or cause or procure anything to be done, innovated, or attempted, to the prejudice of the said Reverend George Arthur Evors, or this his cause of appeal and complaint of nullity, or of our jurisdiction or authority in that behalf, so that he may have full liberty and power, as in justice he ought, to proceed in and prosecute his said cause of appeal and complaint, for so long as it shall be depending undetermined in judgment before us, under pain of the law and contempt thereof; and we do further empower and strictly enjoin and command you, jointly and severally, peremp-



torily to cite, or cause to be cited, the said Mary, otherwise Sarah, Callan to appear personally, or by her proctor duly constituted, before us, our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on the sixth day after the service of these presents, if it be a general session, bye-day, or additional court-day, of our said court, otherwise on the general session, bye-day, or additional court-day next ensuing, at the hour of ten in the forenoon, and there to abide, if occasion require, during the sitting of the court, then and there to answer to the said Reverend George Arthur Evors, in his said cause of appeal and complaint of nullity, and further to do and receive, as unto law and justice shall appertain, under pain of the law and contempt thereof, and what you shall do or cause to be done in the premises, you shall duly certify us, our surrogate, or other competent judge in this behalf, together with these presents.

Dated at London, this 21st day of June, in the year of our Lord 1842.

On appealing to Her Majesty in Council, a memorial or petition, subscribed by the proctor of the appellant, and praying Her Majesty to refer the appeal to the Judicial Committee of the Privy Council, is lodged with the clerk of the Council Office. If the standing order of reference, mentioned in 7 and 8 Vict. c. 69, s. 9, is in force, the appeal stands referred as prayed immediately on the lodging of the memorial, otherwise the reference will be made by a specific order of Her Majesty in Council.

On receipt of a notice from the clerk of the council, informing the Registrar of the High Court of Admiralty and Appeals that the order of reference has been made, the inhibition and citation will be allowed to issue.

*Petition of Appeal.*

Petition of  
appeal.

From the Prerogative Court of Canterbury.

JOHN SCOTT, Esquire, appellant, *against* WILLIAM SCOTT, respondent.

To the Queen's Most Excellent Majesty in Council.  
The humble petition of Richard Addams, of Doctors' Commons, London, the proctor for and on behalf of the abovenamed John Scott, Esquire,

Sheweth—That in a certain cause or business of granting letters of administration of all and singular the goods, chattels, and credits of Christopher Scott, formerly of Saint Andrews, in the province of New Brunswick, late of Blackhouse, near Greenock, in North Britain, but at Tower Hill, in the city of London, deceased, lately depending in the Prerogative Court of Canterbury, between the said John Scott, Esquire, the natural and lawful brother, only next of kin, and one of the parties entitled in distribution of the personal estate and effects of the said deceased, in case he shall be pronounced to have died intestate, the party promoting the said cause or business on the one part, and William Scott, the sole executor named in a pretended will of the said deceased, bearing date the 20th day of July, in the year 1833, the party against whom the said cause or business was promoted on the other part, the judge of the said court did, on the 18th day of July, in

the present year 1834, sign, promulge, and give a definitive sentence in writing, wherein and whereby he pronounced for the force and validity of the said pretended will, and decreed probate thereof to be granted and committed to the said William Scott, the sole executor therein named, and further condemned the said John Scott in costs from the time of giving in his allegation. From which sentence an appeal has been duly made and interposed by and on behalf of the said John Scott to your Most Excellent Majesty, the King in Council, and hath been duly lodged in the registry of the High Court of Admiralty and Appeals.

Wherefore your petitioner most humbly prays that your Majesty will be graciously pleased to refer this petition and the said appeal to the Judicial Committee of your Privy Council; and your petitioner will ever pray.

(Signed)

R. A.

Doctors' Commons.

In ordinary practice, the inhibition is permitted to go under seal by the Judge of the Appellate Court, without raising any question (i); but on occasion the judge will exercise his judgment on the point, and decide whether there is sufficient ground to issue his inhibition. The question may be brought before him by the party appellate entering his caveat in the registry of the Court of Appeal.

By the ninety-sixth canon, an inhibition from the Court of Arches must be subscribed by the appellant's counsel.

(i) *Herbert v. Herbert*, Phill. 2, p. 444.

It is said that a year, or a year and a day, are allowed for the prosecution of an appeal (*k*) ; but notwithstanding this rule, the court below will, at any time during that period, unless stayed by an inhibition from the superior jurisdiction, proceed to the enforcement of its sentence. It is not, however, in the power of the court below to declare an appeal to be deserted (*l*).

The prosecution of an appeal, therefore, legally commences from the extraction of the inhibition and citation.

The inhibition and citation is served upon the registrar of the court below, and upon the party or his proctor.

The court below is now *bound*, (though not previously,) to defer to the appeal (*m*). In technical words, its hands are tied up ; and, on the return of the inhibition and citation, the Court of Appeal can interpose for the protection of the appellant from any prejudicial acts either of the judge *a quo*, or the party appellate.

These prejudicial acts or attempts in derogation of the appeal are denominated *attentats* (*n*) ; and, on being brought to the notice of the judge *ad quem*, will be revoked by him. One mode of submitting them to the decision of the latter, in order to procure their revocation, has been to plead them in the ordinary libel of appeal (*o*). But this, though supported by the latest precedent, does not seem so regular a course as to proceed and exhibit articles distinctly against the judge

(*k*) Oughton De Appellationibus, tit. 319.

(*l*) Curt. vol. 2, Rookes v. Rookes, p. 350.

(*m*) Chichester v. Donegal,

Add. 1, p. 21. Middleton v. Middleton, Hagg. R. 2, p. 138.

(*n*) Chichester v. Donegal, Add. 1, p. 22.

(*o*) Ibid, p. 24.

*a quo*, for the same purpose in the Court of Appeal (*p*).

In such a case the whole proceeding is separate from that of the cause of appeal. A citation is issued by the Appellate Court against the inferior judge, calling upon him "to answer to articles to be administered to him touching and concerning his contempt and breach of duty in carrying into execution the sentence (or whatever the attentat may be.)" Articles are afterwards exhibited, and the cause is conducted to a sentence in the usual manner (*q*).

The proceedings of a cause of appeal are conducted in the plenary form. On the return of the inhibition and citation into court by the proctor of the appellant, an appearance is given on behalf of the respondent in a similar manner to that pursued in a cause of the first instance. Proxies are exhibited from each party; the one to prosecute the appeal and the other to answer to it.

### *Appellant's Proxy in the Arches Court.*

Whereas a certain pretended cause or business of bringing in, exhibiting, and leaving in the registry of the Lord Bishop of Saint David's, the true and original last will and testament of Robert Reid, late of the town of Tenby, in the county of Pembroke and diocese of Saint David's, bachelor, deceased, and proving the same in solemn form of law, was lately depending before the Reverend David Archard Williams, Clerk, Surrogate to the Worshipful Augustus Pechell, Master of Arts,

Appellant's  
proxy in the  
Arches  
Court.

(*p*) Chichester v. Donegal,  
Add. 1, p. 24.

(*q*) Luke v. Fisher, No. 1278  
in the Delegates' Processes.

Vicar-General and Official Principal of the Right Reverend Father in God, Connop, by Divine permission, Lord Bishop of Saint David's, promoted and brought by Mary, otherwise Sarah, Callan, spinster, alleging herself to be one of the legatees named in the said will against me, the undersigned Reverend George Arthur Evors, Clerk, therein falsely alleged to be the executor named in the said will; and whereas the said Reverend David Archard Williams, Clerk, the surrogate aforesaid, did, on the 9th day of June, 1842, by his order or decree, admit a certain pretended allegation in writing, given in the said pretended cause, on the part and behalf of the said Mary, otherwise Sarah, Callan, bearing date Thursday, the 12th day of May last; and whereas from the said order or decree an appeal hath been duly made and interposed by me, or on my part and behalf, to the Arches Court of Canterbury and to the official principal thereof. Now know all men by these presents, that I, the said Reverend George Arthur Evors, Clerk, for divers good causes and considerations me thereto especially moving, have nominated, constituted, and appointed, and do hereby expressly nominate, constitute, and appoint, George Buckton, Notary Public, one of the procurators-general of the Arches Court of Canterbury, or, in his absence, any other proctor of the said court, to be my true and lawful proctor, for me and in my name, to appear before the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the said Arches Court of Canterbury, lawfully constituted, his surrogate, or any other competent judge, in this behalf, and exhibit this, my special proxy, and pray and procure the same to be admitted and enacted, and also for me

and in my name to prosecute the said appeal, and generally to do, perform, and execute all and every other acts, matters, and things that shall or may be requisite and necessary to be done for me and on my behalf in and about the premises, and to abide for me in judgment until a definitive sentence or final decree shall be had and made therein; and I also hereby authorize and empower my said proctor, one or more other proctor or proctors, or other fit and competent person or persons, as often as he shall see fit, or occasion require, to substitute and appoint, and the same to revoke, hereby ratifying, allowing, and confirming all and whatsoever my said proctor, or his substitute or substitutes, shall lawfully do or cause to be done for me and in my name herein.

In witness whereof I have hereto set my hand and seal this 23rd day of June, A.D. 1842.

GEORGE ARTHUR EVORS, L.S.

Sealed and delivered in the presence of us,

G. G. WILLIAMS, Clerk, Newtown.

W. R. POWELL, Ironmonger, Newton.

*Respondent's Proxy in the Arches Court.*

Whereas a certain cause or business of bringing in, exhibiting, and leaving in the registry of the Lord Bishop of Saint David's, the true and original last will and testament of Robert Reid, late of the town of Tenby, in the county of Pembroke and diocese of Saint David's, and of proving the same in solemn form of law, was lately depending before the Reverend Archard Williams, Clerk, Surrogate of the Worshipful Augustus Pechell, Master of Arts, Vicar-General and Official Principal of the Right Reverend Father in God, Con-

Respondent's  
proxy in the  
Arches  
Court.

nop, by Divine permission, Lord Bishop of Saint David's, promoted and brought by me, the undersigned Mary, otherwise Sarah, Callan, spinster, one of the legatees named in the said will, against the Reverend George Arthur Evors, Clerk, the executor named in the said will; and whereas the said Reverend David Archard, Clerk, the surrogate aforesaid, on the 9th day of June, 1842, rightly and duly proceeding, did, by his order or decree, admit a certain allegation in writing, given in the said cause on my part and behalf; and whereas, from the said order or decree, an appeal hath been made and interposed by or on the part and behalf of the said Reverend George Archard Evors, Clerk, to the Arches Court of Canterbury, and to the official principal thereof; and whereas the usual inhibition and citation hath issued in the said cause, under the seal of the said Arches Court. Now, know all by these presents, that I, the said Mary, otherwise Sarah, Callan, spinster, for divers good causes and considerations, me thereunto especially moving, have nominated, constituted, and appointed, and do hereby expressly nominate, constitute, and appoint, A. B., one of the Procurators-General of the Arches Court of Canterbury, or, in his absence, any other proctor of the said court to be my true and lawful proctor for me, and in my name to appear before the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the said Arches Court of Canterbury, his surrogate, or any other competent judge in this behalf, and exhibit this my special proxy, and, by virtue thereof, for me, and in my name, to answer to the said pretended appeal, and do all such judicial acts, matters, and things as shall be requisite to be done for



me towards procuring the said appeal to be pronounced against, and the said order or decree appealed from affirmed; and generally, &c., (as before.)

*Appellant's Proxy before the Judicial Committee.*

Whereas there is now depending, before the Judicial Committee of Her Majesty's Privy Council, a certain business of appeal and complaint of nullity, promoted and brought by Edward Hitchings, the lawful second cousin and next of kin of James Wood, late of the city of Gloucester, banker, deceased, (a party cited to see proceedings and admitted to be a contradictor to the pretended last will and testament, as contained in two certain paper writings, marked A and B, of the said deceased, bearing date, as pretended, the 2nd and 3rd December, 1834,) against Sir Matthew Wood, Baronet, (heretofore Matthew Wood, Esquire,) John Chadborn, Jacob Osborn, and John Surman Surman, the pretended executors named in the said pretended will; and against Elizabeth Goodlake, widow, the alleged second cousin and next of kin of the said deceased. Now know all men by these presents, that I, the aforesaid Edward Hitchings, for divers good causes and considerations, me thereunto especially moving, do hereby nominate, constitute, and appoint George Buckton, Notary Public, one of the Procurators-General of the Arches Court of Canterbury, (or, in his absence, any other proctor of the said court for him,) to be my true and lawful proctor for me, and in my name to appear before the said Judicial Committee of Her Majesty's Privy Council, or any four or more of them, in the Privy Council Chamber, at Whitehall, otherwise before their Lordships' surrogate, in the Common Hall

Appellant's  
proxy before  
the Judicial  
Committee.

of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, to exhibit this my special proxy, and in virtue thereof on my behalf to prosecute the said appeal until the final conclusion thereof, and therein to do all such judicial and other acts, matters, and things as shall be needful and necessary to be done and performed for me and on my behalf in the said cause or business of appeal and nullity, and whatsoever my said proctor shall lawfully do, or cause to be lawfully done, in and about the premises, I do hereby promise to ratify, confirm, and allow for valid.

In witness whereof I have hereunto set my hand and seal, the       day of       , in the year of our Lord 1838.

*Respondent's Proxy before the Judicial Committee.*

Respondent's  
proxy before  
the Judicial  
Committee.

Whereas in a certain cause or business of citing me, the undersigned William Arundell Yeo, by the sole executor named in the last will and testament of George Acland Barbor, late of Fremington House, in the parish of Fremington, in the county of Devon, but at Frankfort on the Maine, Esquire, deceased, to accept probate of a pretended codicil to the said will, bearing date, as pretended, on the 6th day of July, 1838, or shew good and sufficient cause to the contrary, lately depending in the Prerogative Court of Canterbury, promoted by Anne Mackenzie, (wife of Tom Dight Mackenzie,) formerly Melton, spinster, a legatee named in the said pretended codicil, against me, the said William Arundell Yeo, the Judge of the said Prerogative Court, did, on the 6th day of June, 1842, by his final interlocutory

order or decree, pronounce against the force and validity of the said pretended codicil, and did condemn the said Anne Mackenzie and Tom Dight Mackenzie in the costs of the said cause ; and whereas an appeal from the said interlocutory order or decree has been since made and interposed by, or on the part and behalf of, the said Anne Mackenzie and Tom Dight Mackenzie to Her Majesty in Council ; and whereas Her Majesty hath been pleased to refer the said appeal to the Judicial Committee of Her Majesty's Most Honourable Privy Council ; and an inhibition and citation have accordingly issued under seal of the said Judicial Committee in the said cause of appeal. Now know all men by these presents, that I, the said William Arundell Yeo, for divers good causes and considerations me thereunto especially moving, have nominated, constituted, and appointed, and do hereby expressly nominate, constitute, and appoint, George Buckton, one of the Procurators-General of the Arches Court of Canterbury, and my original proctor, or, in his absence, any other proctor of the said court, to be my true and lawful proctor for me, and in my name to appear before the said Judicial Committee of Her Majesty's Most Honourable Privy Council, or any four or more of them, in the Privy Council Chamber, at Whitehall, otherwise before their Lordships' surrogate, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, and exhibit this my special proxy, and, in virtue thereof, to answer to the said pretended appeal and complaint of nullity, and do all such judicial and other acts, matters, and things, as shall be requisite and necessary to be done and performed for me, and on my part and

behalf, in the said cause of appeal and complaint of nullity, towards procuring the said appeal to be pronounced against, and the aforesaid interlocutory order or decree to be affirmed; and generally, &c., (as before.)

A libel is then prayed by the respondent, and the appellant is assigned to libel on the ensuing court-day.

*Libel of Appeal in the Arches Court.*

Libel of appeal in the Arches Court.

**THE LORD BISHOP OF ELY against GIBBONS and GOODY.**

In the name of God, Amen. Before you the Right Honourable Sir Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, your surrogate, or any other competent judge in this behalf, the proctor of the Right Reverend Father in God, Bowyer Edward, by Divine permission, Lord Bishop of Ely, the alleged impropiator or propriator of a portion of the great tithes annually arising and renewing in the parish of Clare, in the county of Suffolk, diocese of Norwich, and province of Canterbury, against Samuel Gibbons, and Samuel Goody, churchwardens of the same parish, county, and diocese, and against all and every other persons or person lawfully intervening or appearing in judgment for them before you by way of complaint, and hereby complaining unto you in this behalf, doth say, allege, and in law articulately propound, as follows, to wit:

**First.**

That a certain cause or business, of the promotion of the office of the judge, was lately depending in judgment in the Episcopal and Consistorial Court of

Norwich, held at Norwich, before the Right Honourable Father in God, Henry, by Divine permission, Lord Bishop of Norwich, or before the Worshipful William Younge, Clerk, Master of Arts, Vicar General of the said Lord Bishop of Norwich, and Official Principal of the said Episcopal and Consistorial Court of Norwich, promoted by Samuel Gibbons and Samuel Goody, churchwardens of the parish and parish church of Clare, in the county of Suffolk, and diocese of Norwich, (voluntary promoters of the said office,) against the said Right Reverend Father in God, Bowyer Edward, by Divine permission Lord Bishop of Ely, the alleged impropiator or proprietor of a portion of the great tithes, annually arising, and renewing in the said parish of Clare, to answer the defaults found in the chancel of the parish church of Clare, aforesaid; and this was and is true, public, and notorious, and the party proponent doth allege and propound every thing in this and the subsequent articles of this libel contained, jointly and severally.

That the said Worshipful William Younge, Clerk, Master of Arts, the pretended judge aforesaid, unduly and unjustly proceeding in the said cause or business, and (saving all reverence due to him,) too much favouring the said Samuel Gibbons and Samuel Goody more than by law he ought, and not in the least regarding the requisite and just forms of law and judicial proceedings, but against the said Lord Bishop of Ely, acting in all things null and unjustly, as well by virtue of his pretended office, as at the unjust instance, instigation, solicitation, petition, and procurement of the said Samuel Gibbons and Samuel Goody, or their proctor, did in fact, though unduly, on or about the 9th day

of March, 1830, overrule the objections taken on behalf of the said Lord Bishop of Ely, to the personal answers of the aforesaid Samuel Gibbons and Samuel Goody, to the several positions or articles of a certain allegation, given and admitted in the said cause or business, on the part and behalf of the said Lord Bishop of Ely, and did admit and decree the said answers to be full and sufficient, notwithstanding that the same were both redundant and insufficient, to the manifest injury of justice, and to the very great prejudice of the said Lord Bishop of Ely; and this was and is true, and the party proponent doth allege and propound as before.

Third.

That the proctor of the said Lord Bishop of Ely, looking upon and believing his said party and himself in his name to be very much injured and aggrieved by all and singular the grievances, nullities, iniquities, injustices, and errors in proceedings done to and inflicted upon his said party, in the said cause, and fearing that he may be further injured and aggrieved thereby, hath rightly and duly appealed from them and every of them, and more especially from the said pretended judge, having on the 9th day of March, in the year of our Lord, 1830, in fact, though unduly, overruled the objections taken on behalf of the said Lord Bishop of Ely, to the personal answers of the aforesaid Samuel Gibbons and Samuel Goody, to the several positions or articles of the said allegation given and admitted in the said cause or business, on the part and behalf of the said Lord Bishop of Ely, and having admitted and decreed the said answers to be full and sufficient, and notwithstanding the said answers were both redundant and insufficient, and ought not to have been admitted

therein, and from everything following and arising therefrom, to the Arches Court of Canterbury, and to you the official principal thereof aforesaid, and hath equally and alike principally complained of all and singular the nullities, iniquities, injustices, injuries, and errors in the proceedings before mentioned, and all other acts and facts that may or shall be collected from the pretended proceedings of the said judge, from whom this appeal and complaint is brought, or his surrogate; and this was, &c.

That the aforesaid Samuel Gibbons and Samuel Goody, are of the parish of Clare, in the county of Suffolk and diocese of Norwich, and province of Canterbury, and therefore, and by reason of the premises, were and are subject to the jurisdiction of this court; and this was, &c. Fourth.

That all and singular the premises were and are true, and so forth. Fifth.

### *Libel of Appeal before the Judicial Committee.*

In the name of God, amen. Before you, the Judicial Committee of Her Majesty's Most Honourable Privy Council, specially constituted and appointed, the proctor of John Scott, Esquire, the natural and lawful brother, only next of kin, and one of the parties entitled in distribution of the personal estate and effects of Christopher Scott, formerly of Saint Andrews, in the province of New Brunswick, late of Blackhouse, near Greenock, in North Britain, but at Tower Hill, in the city of London, Esquire, deceased, in case he shall be pronounced to have died intestate, by way of appeal and complaint, and hereby complaining unto you in

Libel of appeal before the Judicial Committee.

this behalf, doth say, allege, and in law articulately propound as follows, to wit.

First.

That a certain cause or business of granting letters of administration of all and singular the goods, chattels, and credits of the said Christopher Scott, formerly of Saint Andrews, in the province of New Brunswick, late of Blackhouse, near Greenock, in North Britain, but at Tower Hill, in the city of London, Esquire, deceased, was lately depending before the Right Honourable Sir John Nicholl, Knight, Doctor of Laws, Master, Keeper, or Commissary of the Prerogative Court of Canterbury, promoted by the said John Scott, Esquire, the natural and lawful brother, only next of kin, and one of the parties entitled in distribution of the personal estate and effects of the said deceased, in case he shall be pronounced to have died intestate, on the one part, and William Scott, the sole executor named in a pretended will of the said deceased, bearing date the 20th day of July, in the year 1833, on the other part; and this was and is true, public, and notorious, and the party proponent doth allege and propound everything in this and the subsequent articles of this libel contained, jointly and severally.

Second.

That the said Sir John Nicholl, Knight, the judge aforesaid, unduly and unjustly proceeding in the said cause or business, did, on the 18th day of July, in the present year 1834, sign, promulge, and give a definitive sentence in writing, wherein and whereby he pronounced for the force and validity of the said pretended will, and decreed a probate thereof to be granted and committed to the said William Scott, the sole executor therein named, and further condemned the said John Scott in costs, from the time of giving in his allegation, against right and



justice, acting in all things nully and unjustly, as well by virtue of his office as at the unjust instance, instigation, solicitation, procurement, and petition of the said William Scott or his proctor, to the very great detriment, injury, and grievance of the said John Scott; and this was, and is true, public, and notorious, and the party proponent doth allege and propound as before.

That the proctor of the said John Scott, conceiving Third.  
his said party to be much injured and aggrieved by all and singular the nullities, injustices, and injuries of the said judge, as before mentioned, and justly fearing that his said party may be further injured and aggrieved thereby, hath rightly and duly appealed from them, and every of them, and more especially from the said judge, on the said 18th day of July, in the present year 1834, pronouncing for the force and validity of the said pretended will, and decreeing a probate thereof to be granted and committed to the said William Scott, the sole executor therein named, and condemning the said John Scott in costs as aforesaid, and from everything following and arising therefrom, and hath equally and alike principally complained of them, and every of them, to His Majesty in Council, and that His Majesty hath been graciously pleased to refer the said appeal to you, the Judicial Committee of His Majesty's Most Honourable Privy Council aforesaid; and this was, &c.

That an inhibition hath issued, under seal of this Fourth.  
court, at the petition of the proctor of the said John Scott, whereby the said Right Honourable Sir John Nicholl, Knight, Doctor of Laws, the judge from whom this cause is appealed, as aforesaid, his surrogate, registrar, or actuary, and the said William Scott in special,

and all others in general, who ought by law to be inhibited in this behalf, were and are inhibited from doing, or attempting or causing or procuring to be done or attempted, anything to the prejudice of the said party appellant, in his said cause of appeal and complaint of nullity, so long as the same shall remain undetermined in judgment; and this was, &c.

Fifth. That all and singular the premises were and are true, and so forth.

It is competent to a non-appellant party in the original cause to adhere to the appeal interposed by another party therein, so far as his interest is prejudiced by the sentence or decree appealed from (*r*). By so doing he takes the benefit of the appeal, and obtains a rehearing of the question which more particularly regards himself.

The adhesion is contained in the following instrument:—

### *Instrument of Adhesion.*

In the name of God, amen. Before you, the Notary Public approved and allowed by authority, and witnesses of good faith and credit, here present, I, William Mills Pulley, Notary Public, and one of the Procurators-General of the Arches Court of Canterbury, and as such and under such denomination, do exhibit, as proctor, and make myself a party for Thomas Helps, Esquire, George Worrall Counsel,

(*r*) Oughton, (*Ordo Judiciorum*, tit. ccc,) says, “*Inhærere appellationi adversarii et uti beneficio ejusdem*,” &c.

Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the corporation of the city of Gloucester, with design and intent to adhere to the appeal and complaint made and interposed on the parts and behalf of Sir Matthew Wood, Baronet, heretofore Matthew Wood, Esquire, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, the asserted executors named in the will of James Wood, late of the city of Gloucester, Esquire, deceased, as contained in two paper writings marked A and B, and do, by this writing, say, allege, and in law expressly propound, that in a certain cause or business of proving in solemn form of law the said will, as contained in the said two paper writings marked A and B, of the said James Wood, Esquire, deceased, lately depending in judgment in the Prerogative Court of Canterbury, before the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of the said Prerogative Court of Canterbury, promoted by the said Sir Matthew Wood, Baronet, heretofore Matthew Wood, Esquire, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, as the executors therein named, against the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the aforesaid corporation of the city of Gloucester, respectively, legatees in a codicil to the will of the said James Wood, Esquire, the party in the said cause, deceased, bearing date        July, 1835, and now remaining in the registry of the said Prerogative Court of Canterbury, annexed to a certain affidavit of the said Thomas Helps, Esquire,

and of Edward Archer Wilde, Esquire; and also against Elizabeth Goodlake, widow, and John Philpotts, Esquire, the other legatees named in the said codicil; and also against Elizabeth Goodlake, widow, and Edward Hitchings, alleged to be second cousins and next of kin of the said deceased; and also against the next of kin of the said deceased, in special, and all others in general, having or pretending to have any right, title, or interest in the goods, chattels, and credits of the said deceased; and also of proving in like solemn form of law the aforesaid codicil to the will of the said James Wood, Esquire, the party deceased, on the part and behalf of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the aforesaid corporation of the city of Gloucester, respectively legatees therein named, on the one part, and the aforesaid Sir Matthew Wood, Baronet, heretofore Matthew Wood, Esquire, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, alleged to be the executors named in the will of the said deceased, as contained in the aforesaid two paper writings marked A and B, or the said Elizabeth Goodlake, widow, and Edward Hitchings, alleged to be second cousins and next of kin of the said deceased, on the other part, the said Right Honourable Sir Herbert Jenner, Knight, the Master, Keeper, or Commissary aforesaid of the said Prerogative Court of Canterbury, howsoever constituted, did, in fact, though in part unduly, on the by-day after Hilary Term, to wit, Wednesday, the 20th day of the month of February, in the year of our Lord 1839, in pain of parties cited, thrice called, and not

appearing, by his final interlocutory decree, having the force and effect of a definitive sentence in writing, pronounce against the force and validity of the paper writing marked A, bearing date the 2nd day of December, 1834, and propounded with the paper writing marked B, on the part and behalf of the said Sir Matthew Wood, Baronet, then Matthew Wood, Esquire, John Chadborn, Jacob Osborn, Esquire, and John Surman Surman, as together containing the last will and testament of the said James Wood, Esquire, the deceased in the said cause, the said paper writing now remaining in the registry of the said Prerogative Court of Canterbury, annexed to an affidavit of the said John Philpotts, Esquire, one of the parties in the said cause; and did further pronounce against the force and validity of the aforesaid codicil, also marked with the letter B, and bearing date July, 1835, also remaining as aforesaid in the registry of the said Prerogative Court of Canterbury, annexed to the aforesaid affidavit of the aforesaid Thomas Helps, Esquire, and Edward Archer Wilde, Esquire, and propounded by me, the proctor of, and on behalf of, the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, Esquire, the syndic, lawfully appointed, of the corporation of the aforesaid city of Gloucester, respectively legatees named in the said codicil, to the manifest injury of justice, and to the very great detriment; prejudice, and grievance of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the said corporation of the said city of Gloucester, notwithstanding that I, the proctor aforesaid, at the time

aforesaid, prayed the said Right Honourable the Judge to pronounce for the force and validity of the aforesaid codicil: wherefore, and because since interposing the said interlocutory decree, it is, as pretended, appealed, on the parts and behalf of the said Sir Matthew Wood, Baronet, heretofore Matthew Wood, Esquire, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, from interposing so much of the said interlocutory decree as pronounced against the force and validity of the said paper writing marked A, bearing date the 2nd day of December, 1834, and propounded with the paper writing marked B, on the parts and behalf of the said Sir Matthew Wood, Baronet, then Matthew Wood, Esquire, John Chadborn, Jacob Osborn, and John Surman Surman, as together containing the last will and testament of the said James Wood, Esquire, the deceased in the said cause, I do protest that I do accept the said interlocutory decree interposed by the judge aforesaid, from whom it is appealed as aforesaid in pronouncing against the validity of the said paper writing marked A, bearing date the 2nd day of December, 1834, and propounded with the paper writing marked B, on the part and behalf of the aforesaid Sir Matthew Wood, Baronet, then Matthew Wood, Esquire, John Chadborn, Jacob Osborn, and John Surman Surman, as together containing the last will and testament of the said James Wood, Esquire, the deceased in the said cause, the said paper writing now remaining in the registry of the said Prerogative Court of Canterbury, annexed to an affidavit of the aforesaid John Philpotts, Esquire, one of the aforesaid parties in the said cause, in manner and form as aforesaid, and so far as it makes for the interest

of my aforesaid parties, but not otherwise, but, on the contrary, for so much of the said interlocutory decree as concerns or makes against the interest of my aforesaid parties, in not pronouncing for the force and validity of the aforesaid codicil, also marked as aforesaid with the letter B, and bearing date the                      day of July, 1835, also now remaining in the registry of the said Prerogative Court of Canterbury, annexed to the affidavit of the said Thomas Helps, Esquire, and Edward Archer Wilde, Esquire, and propounded by me as aforesaid on the parts and behalf of my aforesaid parties, I adhere to the said appeal on the part and behalf of the aforesaid Sir Matthew Wood, Baronet, heretofore Matthew Wood, Esquire, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, interposed, and more especially for that the said judge from whom it is appealed did not pronounce for the force and validity of the aforesaid codicil, bearing date                      July, 1835, propounded by me as aforesaid in manner aforesaid, and I do protest of using all benefit of the said adhesion compatible and agreeable to law ; and lastly I do protest of correcting and reforming this my adhesion, and of adding thereto or subtracting therefrom, and reducing them into better and more competent form, as shall be consonant and agreeable to law, style, and custom ; upon all and singular which premises the said William Mills Pulley required me, the notary public underwritten, to make one or more public instrument or instruments, and the witnesses subscribed to attest the same.

(Signed)

E. W. WADESON, Notary Public.

This adhesion was interposed on the 7th day of March, in the year of our Lord 1839, by the said William Mills Pulley, Notary Public, the Procurator aforesaid, in the office of Edward Weyman Wadeson, Notary Public, situate in Doctors' Commons, London, which said procurator adhered, protested, and did in all respects as in the above written instrument is contained, there being present at the same time with me, the notary public above mentioned, George Dennis and William Berrecloth, both of Doctors' Commons aforesaid, literate persons, witnesses, specially required and desired to attest the same, which I attest.

E. W. WADESON, Notary Public.

Witnesses,

GEORGE DENNIS, Clerk to Mr. Pulley,  
Doctors' Commons.

WILLIAM BERRECLOTH, Servant to  
Mr. Wadeson, Doctors' Commons.

The adherent also libels equally with the appellant.  
The libel of adhesion is as follows:—

### *Libel of Adhesion.*

Libel of ad-  
hesion.

In the name of God, amen. Before you, the Judicial Committee of Her Majesty's Most Honourable Privy Council, specially constituted and appointed, the proctor of Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and the Corporation of the city of Gloucester, by Henry Hooper Wilton, the syndic lawfully appointed by the said corporation, respectively legatees in a codicil to



the will of James Wood, late of the city of Gloucester, Esquire, bearing date                      July, 1835, adhering to so much of a certain appeal, interposed by and on the part and behalf of Sir Matthew Wood, Baronet, (heretofore Matthew Wood, Esquire,) John Chadborn, Esquire, Jacob Osborn, and John Surman Surman, Esquire, all or some of them, against Elizabeth Goodlake, widow, and Edward Hitchings, alleged to be second cousins and next of kin of the said deceased, so far as the sentence or interlocutory decree appealed from concerns or makes against the interest of the aforesaid Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the said corporation of the said city of Gloucester, and also and in like manner against any other person or persons lawfully intervening in judgment for them, or either of them, before you, by way of complaint, and hereby complaining unto you, in this behalf, doth say, allege, and in law articulately propound, as follows, to wit :—

That a certain cause or business of proving in solemn      **First.**  
form of law the last will and testament, as contained in two paper writings, respectively marked A and B, of the said James Wood, late of the city of Gloucester, Esquire, deceased, lately depending in judgment in the Prerogative Court of Canterbury, before the Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, Master, Keeper, or Commissary of the said Prerogative Court of Canterbury, promoted by the said Sir Matthew Wood, Baronet, (then Matthew Wood, Esquire,) John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, as the executors

therein named, against the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the aforesaid corporation of the city of Gloucester, respectively, legatees in a codicil to the will of the said James Wood, Esquire, the party in the said cause, deceased, bearing date July, 1835, and remaining in the registry of the said Prerogative Court of Canterbury, annexed to a certain affidavit of the said Thomas Helps, Esquire, and of Edward Archer Wilde, Esquire; and also against Elizabeth Goodlake, widow, and John Philpotts, Esquire, the other legatees named in the same codicil; and also against Elizabeth Goodlake, widow, and Edward Hitchings, alleged to be second cousins and next of kin of the said deceased; and also against the next of kin of the said deceased, in special, and all others in general, having or pretending to have any right, title, or interest in the goods, chattels, and credits of the said deceased; and also of proving, in like solemn form of law, the aforesaid codicil to the will of the said James Wood, Esquire, the party deceased, on the part and behalf of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the aforesaid corporation of the city of Gloucester, respectively, legatees therein named, on the one part, and the aforesaid Sir Matthew Wood, Baronet, (heretofore Matthew Wood, Esquire,) John Chadborn, Jacob Osborn, and John Surman Surman, alleged to be the executors named in the will of the said deceased, as contained in the aforesaid two paper writings marked A and B, or the said Elizabeth Goodlake, widow, and Edward

Hitchings, alleged to be second cousins and next of kin of the said deceased, on the other part; and this was and is true, public, and notorious, and the party proponent doth allege and propound everything in this and the subsequent articles of this libel contained, jointly and severally.

That the Right Honourable Sir Herbert Jenner, Second.  
Knight, Doctor of Laws, the Judge aforesaid, in part unduly and unjustly proceeding in the said cause or business, and saving always all reverence due to him, and too much favouring the part of the said Elizabeth Goodlake, widow, and Edward Hitchings, the alleged next of kin, and other the next of kin in special, of the said deceased, more than by law he ought to have done, and not regarding the requisites and forms of law and judicial proceedings, did, in fact, though in part unduly, on the bye-day after Hilary Term, to wit, Wednesday, the 20th day of February, in the year of our Lord 1839, in pain of parties cited, thrice called, and not appearing, by his interlocutory decree, having the force and effect of a definitive sentence in writing, after pronouncing against the force and validity of the paper writing marked A, bearing date the 2nd day of December, 1834, and propounded with paper writing marked B, on the part and behalf of the said Sir Matthew Wood, Baronet, (then Matthew Wood, Esquire,) John Chadborn, Jacob Osborn, and John Surman Surman, as, together, containing the last will and testament of the said James Wood, Esquire, the deceased in the said cause, (the said paper writing marked A, together with the paper writing marked B, remaining in the registry of the said Prerogative Court of Canterbury, annexed to an affidavit of the aforesaid John Philpotts,

Esquire, one of the parties in the said cause,) did unduly and unjustly pronounce against the force and validity of the aforesaid codicil, also marked with the letter B, and bearing date July, 1835, also remaining in the registry of the said Prerogative Court of Canterbury, annexed to an affidavit of the aforesaid Thomas Helps, Esquire, and of Edward Archer Wilde, Esquire, and propounded by and on behalf of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the corporation of the city of Gloucester, respectively, legatees named in the said codicil, against right and justice, and acting therein nully and unjustly, as well by virtue of his office, as at the unjust instance, instigation, solicitation, procurement, and petition of the said Sir Matthew Wood, Baronet, John Chadborn, Esquire, Jacob Osborn, and John Surman Surman, or of the said Elizabeth Goodlake, widow, and Edward Hitchings, or some or one of them, or their proctor or proctors, to the very great detriment, injury, and grievance of the aforesaid Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the said corporation of the said city of Gloucester; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

Third.

That the proctor of the said Sir Matthew Wood, Baronet, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, conceiving his parties to be much injured and aggrieved by part of the nullities, injustices, and injuries of the judge afore-

said, and fearing that his said parties might be further injured and aggrieved thereby, immediately appealed from them, and every of them, and the proctor of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the said corporation of the city of Gloucester, also conceiving his said parties to be much injured and aggrieved by other the nullities, injustices, and injuries of the judge aforesaid, as aforesaid, and justly fearing that his said parties may be further injured and aggrieved thereby, and rightly and duly adhered to the said appeal interposed as aforesaid, on the part and behalf of the said Sir Matthew Wood, Baronet, John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, and more especially for that the said judge did not pronounce for the force and validity of the aforesaid codicil, bearing date                      July, 1835, propounded by him as aforesaid, in manner aforesaid, and protested of using all benefit of the said adhesion compatible and agreeable to law, and hath equally and alike principally complained of all such the nullities, injustices, and injuries, and for everything following and arising therefrom, and each and every of them, to Her Majesty in Council, and that Her Majesty hath been graciously pleased, at the petition of the proctor on behalf of the aforesaid Sir Matthew Wood, Baronet, John Chadborn, Esquire, and Jacob Osborn, Esquire, three of his aforesaid parties, to refer the said appeal to you, the Judicial Committee of Her Majesty's Most Honourable Privy Council aforesaid; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

Fourth.

That an inhibition hath issued under seal of this court, at the petition of the proctor of them, the aforesaid Sir Matthew Wood, Baronet, (heretofore Matthew Wood, Esquire, John Chadborn, Esquire, and Jacob Osborn, Esquire, whereby the said Right Honourable Sir Herbert Jenner, Knight, Doctor of Laws, the judge from whom this cause is appealed as aforesaid, his Surrogate, Registrar, or Actuary, and the said Elizabeth Goodlake, widow, and Edward Hitchins, the cousins german and alleged next of kin of the said deceased, in special, and all others in general, having or pretending to have any right, title, or interest in the goods, chattels, and credits of the said deceased, or who ought by law to be inhibited in this behalf, were and are inhibited from doing, or attempting, or causing, or procuring to be done or attempted, anything to the prejudice of the said parties appellant, or to their or his said cause of appeal and complaint of nullity, so long as the same shall remain undetermined in judgment between them; and a like inhibition hath, at the petition of the proctor of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic of the corporation of the said city of Gloucester, been decreed to issue under seal of this court, whereby the said Right Honourable Sir Herbert Jenner, Knight, the Judge aforesaid, his Surrogate, Registrar, or Actuary, and the aforesaid Elizabeth Goodlake, widow, and Edward Hitchins, the alleged second cousins and next of kin of the said deceased, in special, as also the said next of kin in special, and all others in general, having or pretending to have any right, title, or interest in the goods, chattels, and credits of the said deceased, who

ought by law to be inhibited in this behalf, were decreed to be inhibited from doing, or attempting, or causing, or procuring to be done or attempted, anything to the prejudice or injury of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the said corporation of the said city of Gloucester, or to his or their cause of appeal and complaint of nullity, so long as the same shall remain undetermined in judgment; and this was and is true, public, and notorious, and the party proponent doth allege and propound as before.

That all and singular the premises were and are true, Fifth.  
public, and notorious, and thereof there was and is a public voice, fame, and report, of which legal proof being made, the party proponent prays right and justice to be effectually done and administered to his party in the premises, and that the appeal and complaint of the said Sir Matthew Wood, Baronet, (heretofore Matthew Wood, Esquire,) John Chadborn, Esquire, Jacob Osborn, Esquire, and John Surman Surman, Esquire, so far as the proctor of the said Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the said corporation of the city of Gloucester, hath adhered thereto, may be pronounced and decreed just and lawful, and for true, just, and lawful causes made and interposed; and that the judge aforesaid so far hath proceeded wrongfully, nully, and unjustly, and that you will reverse so much of the said pretended sentence or decree of the judge aforesaid, bearing date, as aforesaid, the bye-day after Hilary Term, to wit, Wednesday, the 20th day of February,

1839, whereby he pronounced against the force and validity of the aforesaid codicil, propounded as aforesaid by and on the part and behalf of the aforesaid Thomas Helps, Esquire, George Worrall Counsel, Esquire, Samuel Wood, Thomas Wood, and Henry Hooper Wilton, the syndic, lawfully appointed, of the corporation of the said city of Gloucester, and declared the same null and void to all intents and purposes in the law whatsoever, and that right and justice may be effectually done and administered to him and his parties in the premises, humbly imploring the aid of your office in this behalf.

The libel having been admitted, an issue is given, either in the affirmative or negative. If in the latter, the cause proceeds, and the party is assigned to prove, which assignment is complied with on the *process*, i. e., the whole proceedings and pleadings and proofs of the court below, being filed in the Appellate Court. The transmission of the process is enforced by a monition of the following tenor:—

*Monition to transmit Process.*

Monition to  
transmit pro-  
cess.

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever, in and throughout the whole province of Canterbury, greeting :

Whereas the Worshipful John Daubeney, Doctor of Laws, our surrogate, rightly and duly proceeding, in a certain cause of appeal and complaint of nullity, which



is now depending, undetermined in judgment before us, between the Reverend John Bluck, Clerk, Rector of the Rectory and Parish Church of Walsoken, in the county of Norfolk, within the diocese of Norfolk and province of Canterbury, the party promoting the said cause, on the one part, and Matthew Rackham, of the hamlet of Thorpe, in the county and city of Norwich and diocese and province aforesaid, Gentleman, the party against whom the said cause is promoted, on the other part, and which in the first instance thereof was a certain alleged cause or business of shewing cause, if he had or knew any, why he, the said Reverend John Bluck, should not be pronounced to have forfeited one-third of the annual value of his benefice of Walsoken aforesaid, by reason of his having, (as alleged,) been absent therefrom for a period exceeding the space of three months, and not exceeding six months, of and in the year ending the 31st day of December, 1842, without, (as alleged,) any such license or exemption as is allowed for that purpose in an act of Parliament passed in the session of Parliament held in the first and second years of the reign of her present Majesty, entitled, "An Act to abridge the Holding of Benefices in Plurality, and to make Better Provision for the Residence of the Clergy," and without having, (as alleged,) been resident at some other benefice of which he was possessed, and why the payment of such (alleged) forfeiture, together with the reasonable expenses incurred in recovering the same, should not be enforced by motion and sequestration, under and pursuant to the provisions of the said statute, passed in the session of Parliament held in the first and second years of the reign of her present Majesty, as aforesaid, and was

lately depending in judgment in the Consistorial Episcopal Courts of the Right Reverend Father in God, Edward, by Divine permission, Lord Bishop of Norwich, promoted by the said Matthew Rackham against the said Reverend John Bluck, Clerk, hath, at the petition of the proctor of the said Reverend John Bluck, decreed the whole and entire proceedings of the judge, from whom the said cause is appealed, to be transmitted in manner and form hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower, and strictly enjoin and command you, jointly and severally, peremptorily to monish, or cause to be monished, the Worshipful William Yonge, Clerk, Master of Arts, Vicar-General in Spirituals of the said Right Reverend Father in God, and Official Principal of the said Episcopal Consistorial Court of Norwich, howsoever appointed, and his surrogate and surrogates, registrar or actuary in special, and all others in general, in whose custody, power, or possession any acts enacted, exhibits, muniments, instruments, or proceedings whatsoever which do in any way relate to or concern the said cause or business do now remain, (whom we do by virtue of these presents so monish,) that they do fully, plainly, entirely, and faithfully transmit, or cause to be transmitted, unto us or our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, on or before the sixth day after they or he shall have been served with these presents, if it shall be a general session, bye-day, or additional court-day of the said Arches Court, otherwise on the general session, bye-day, or additional

court-day of the said court then next ensuing, all and singular the acts enacted, exhibits, muniments, instruments, and proceedings which do in any way relate to or concern the said cause or business, in a true and authentic manner in their original forms, or true and authentic copies thereof, faithfully collated therewith and sealed with an authentic seal, so that full faith and credit may be deservedly given thereto, as well in judgment, as thereout, under pain of the law and contempt thereof. And what ye shall do or cause to be done in the premises you shall duly certify us or our surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, the 15th day of August, in the year of our Lord 1844.

This monition is served upon the registrar of the court below, and an official copy of the proceedings, pleadings, and evidence is transmitted into the registry of the Court of Appeal, authenticated by the hand of the registrar and the seal of the court. If the appeal is from the rejection of a pleading, &c., the monition will enforce the transmission of the original.

*Monition to transmit Originals.*

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever in and throughout the whole province of Canterbury, greeting:

Monition to transmit originals.

Whereas we, rightly and duly proceeding in a certain cause or business of appeal and complaint of nullity,

which is now depending, undetermined in judgment before us, between the Right Reverend Father in God, Bowyer Edward, by Divine permission, Lord Bishop of Ely, the alleged impropiator or proprietor of a portion of the great tithes annually arising and renewing in the parish of Clare, in the county of Norfolk, and diocese of Norwich, the party appellant and complainant, on the one part, and Samuel Gibbons and Samuel Goody, churchwardens of the parish and parish church of Clare aforesaid, the parties appellee, and against whom the said cause or business is promoted, on the other part, and which was originally a cause or business, of the office of the judge of the Episcopal Consistorial Court of Norwich, promoted by the said Samuel Gibbons and Samuel Goody, (voluntary promoters of the said office,) against the said Lord Bishop of Ely, to answer the defaults found in the chancel of the parish church of Clare aforesaid, and was lately depending in judgment in the Consistorial Episcopal Court of Norwich, did, on the day of the date hereof, at the petition of the proctor of the said Lord Bishop of Ely, pronounce for the appeal and complaint made and interposed in this behalf and for our jurisdiction, reversed the order or decree appealed from, retained the principal cause, and therein pronounced the answers of the said Samuel Gibbons and Samuel Goody to the positions or articles of a certain allegation given and admitted in the said cause, in the court below, on the part and behalf of the said Lord Bishop of Ely, to be insufficient, and assigned the said Samuel Gibbons and Samuel Goody, to give further and fuller answers on oath, and moreover at the further petition of the proctor for the said Lord Bishop of Ely, decreed the Worshipful William Younge, Master of Arts, Vicar-General of the

in God; Henry, by Divine  
 of Norwich, and Official  
 Consistorial Court of Nor-  
 surrogate or surrogates, and registrar or  
 and all others in general, in whose  
 power, or possession, any of the acts enacted  
 muniments, instruments, and proceedings;  
 any wise relate to or concern the said cause,  
 do now remain, to be monished in manner and  
 and to the effect hereinafter mentioned, (justice  
 requiring.) We do, therefore, hereby authorize, em-  
 power, and strictly enjoin and command you, jointly  
 and severally, peremptorily to monish or cause to be  
 monished, the said Worshipful William Yonge, his  
 surrogate or surrogates, and registrar or actuary in  
 special, and all others in general, in whose custody,  
 power, or possession, any of the acts enacted, exhibits,  
 muniments, instruments, and proceedings, which in any  
 wise relate to or concern the said cause, are or do now  
 remain, (and whom we do by virtue of these pre-  
 sents so monish,) that they and each of them do fully,  
 plainly, exactly, and faithfully transmit, or cause to be  
 transmitted, on or before the sixth day after they shall  
 have been served with these presents, if it be a general  
 session, bye-day, or additional court-day, of our said  
 Arches Court of Canterbury, otherwise on the general  
 session, bye-day, or additional court-day of our said  
 court, then next ensuing, the original articles and  
 schedule thereto annexed, given and admitted in the  
 said cause, on the part and behalf of the said Samuel  
 Gibbons and Samuel Goody, together with all and  
 singular the original sayings and depositions of the  
 several witnesses produced, sworn, and examined thereon,

and the original interrogatories administered to the said witnesses on the part and behalf of the said Lord Bishop of Ely, closely sealed up in a parcel by themselves, and that they do also transmit, or cause to be transmitted, as aforesaid, the original allegation given and admitted in the said cause on the part and behalf of the said Lord Bishop of Ely, unto us, our surrogate, or some other competent judge in this behalf, in the Common Hall of Doctors' Commons, situate in the parish of Saint Benedict, near Paul's Wharf, London, and place of judicature there, under pain of the law and contempt thereof; and what you shall do or cause to be done in the premises, &c.

Although an affirmative issue be given to the libel, the process must be transmitted, where the Court of Appeal has to take any step requiring a knowledge of the proceedings, or of the sentence of the court below (s).

The next step is to obtain from the respondent's proctor an answer to the appeal. If it is contained in the notarial instrument, and presents no point of objection, he will confess the subscription of the notary and witnesses and the identity of the parties. If the appeal appears in the act, comprized in the process, the proctor is only required to confess the identity of the parties. These observations apply to cases where no objection can be raised to the form or appearance of the instrument, or the circumstances under which the appeal itself is alleged to have been made. But if the latter afford any presumption of a want of genuineness,

(s) *Courtail v. Homfray*, Hagg. R. 2, p. 3.

so as to justify the denial of the appeal, it will be necessary to proceed to its proof by an examination of the notary and witnesses, who are accordingly produced and examined in the usual manner upon the articles of the libel (*t*).

This preliminary question suspends the general cause. An assignation to prove the appeal by witnesses, distinct from the ordinary term probatory, is made upon the proctor of the asserted appellant. The answers of the other party are taken to the libel, publication passes of the evidence taken upon the latter, and the judge assigns "to hear informations as to the instrument of appeal." When the matter has been heard, the judge will either decree that the appellant has, in due time and place, appealed, or negative the legality of his appeal by pronouncing that he has failed in proof of the libel.

If this question is settled in the affirmative, the assignation to prove generally is proceeded with.

A grievance must be heard from the acts of the court below (*u*). But in an appeal from a definitive sentence, it is competent to the parties to plead facts *noviter ad notitiam perventa*.

Matter which could have been pleaded before is not admissible (*x*), and the court will therefore reject an allegation pleading facts not shewn to be *noviter ad notitiam perventa*.

The proof on which the appeal is to be determined being in the registry, the judge or his surrogate will

(*t*) *Scrivener v. Scrivener*, Arches Court, Easter Term, 1837. (*x*) *Price v. Clark and Pugh*, Hagg. R. 3, p. 265. *Fletcher v. Le Breton*, *ibid*, p. 365.

(*u*) *Franshaw v. Verdon*, Lee 1, p. 625.

conclude the cause and assign it for informations and sentence, in the same manner as if it had been an original suit.

The decision of the Appellate Court, (viz., the Arches Court of Canterbury,) is embodied in a final interlocutory decree. If the appeal has been prosecuted from a definitive sentence or final decree, and in the opinion of the judge *ad quem* is well founded, the latter will pronounce "for the appeal and complaint, and that the judge from whom the same has been interposed, has proceeded wrongfully, nully, and unjustly, and will reverse the order or decree or definitive sentence appealed from, retain the principal cause, and therein pronounce that the proctor for the respondent has failed in proof of the libel given and admitted in the court below, and will dismiss the appellant from the original citation and all further observance of justice." This example may be varied to suit any case, wherever the judge *ad quem* complies with the application of the appellant, and the latter is regulated by his prayer in the court below.

The opposite example to that which has been already given will be conceived in the following terms. The judge will pronounce "against the appeal and complaint, and that the judge from whom the same has been made, has proceeded rightly, justly, and lawfully, and will affirm the sentence appealed from and remit the cause."

With the exceptions before mentioned, all the decisions of the Judicial Committee of the Privy Council are in the form of a report or recommendation, which is subsequently confirmed by an order of Her Majesty in Council.



As in the example which I have given of the affirmance of a sentence of the judge *a quo*, it is more usual for the latter to remit or return the principal or original cause to the inferior jurisdiction, and more especially if anything still remains to be done; *e. g.*, where (the appeal having only been interposed from a grievance,) the principal cause requires to be proceeded with, or where a grant or probate, or taxation of costs, will follow upon a definitive sentence.

The remission is comprehended in an instrument under the seal of the superior court, and on its being filed in the court below, authorizes and enables the judge of the latter to "proceed according to the tenor of former acts," or continue the proceedings as if no appeal had been at all interposed from his decree. After remission, the cause stands in precisely the same position as before the appeal, and the court will not decree costs at the prayer of a party who has abandoned his appeal where such an order has formed no part of the original sentence (*y*).

### *Remission of a Cause.*

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to the Right Honourable Stephen Lushington, Doctor of Laws, Vicar-General of the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, and Official Principal of the Consistorial and Episcopal Court of London, lawfully consti-

Remission of  
a cause.

(*y*) Horton v. Wilmot, Curt. vol. 3, p. 52.

tuted, your surrogate, or any other competent judge in this behalf, greeting :

Whereas in a certain cause of appeal and complaint of nullity, which was lately depending before us in judgment between A. B., wife of C. D., of the parish of , in the county of and diocese of London aforesaid, on the one part, against the said C. D., of the same parish, county, and diocese, on the other part, we, the said Herbert Jenner Fust, the official principal aforesaid, rightly and duly proceeding, did, at the petition of the proctor of the said C. D., on the day of the date hereof, by our interlocutory decree, having the force and effect of a definitive sentence in writing, pronounce against the said appeal and complaint, and affirm the sentence or decree of the judge appealed from, and did decree the cause to be remitted, (justice so requiring.) We do, therefore, by these presents remit the said cause, with all and every its incidents, emergents, and dependents and things adjoined thereto and connected therewith, to you and your further examination in the premises ; and we do hereby license and authorize you, your surrogate, or any other competent judge in this behalf, to proceed in the said original cause according to the exigency of the law and the tenor of former acts, notwithstanding any inhibition issued by us to the contrary.

Dated at London, this, &c.

In the foregoing remarks, I have described the course of proceedings where an appeal is carried through to a final decision. If the appeal is abandoned or deserted, at any time after the judge *a quo* has been inhibited, and before suit has been contested, the Court of Appeal

will summarily decree the inhibition to be relaxed. The relaxation is in the form following, and, on being filed in the court below, unties the hands of its judge.

*Relaxation of an Inhibition.*

**Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to the Right Honourable Stephen Lushington, Doctor of Laws, Vicar-General in Spirituals of the Right Reverend Father in God, Charles James, by Divine permission, Lord Bishop of London, and Official Principal of the Consistorial and Episcopal Court of London, lawfully constituted, his surrogate, or any other competent judge in this behalf, greeting :**

Relaxation  
of an inhibi-  
tion.

Whereas in a certain cause of appeal and complaint of nullity, which was lately depending before us in judgment, between Robert Hay, Esquire, of Grove House, Edmonton, in the county of Middlesex, and province of Canterbury, and Emma Sarah Ray, spinster, falsely called Sherwood, the pretended wife of Thomas Moulden Sherwood, of the same place, of the one part, and the said Thomas Moulden Sherwood, of the parish of Hendon, in the said county of Middlesex, of the other part, the Worshipful Joseph Phillimore, our surrogate, did, at the petition of the proctor of the said Robert Ray and Emma Sarah Ray, on the 18th day of January, last past, decree you, the said Right Honourable Stephen Lushington, your surrogate, or surrogates, registrar, or actuary, and the said Thomas Moulden Sherwood, in special, and all others in general, who by law in that behalf were required, to be inhibited, and we

did inhibit you and them that neither you nor they, or either of them, do innovate or attempt, or cause or procure to be done, innovated, or attempted, anything to the prejudice of the said Robert Ray and Emma Sarah Ray, the parties appellant, or of their said cause of appeal and complaint during the dependence thereof in this court; and whereas we did, on the day of the date hereof, decree the said inhibition to be relaxed. Therefore we do, by these presents, relax the said inhibition.

Dated at London, &c.

Should the appellant, after the suit has been contested, withdraw his appeal, the cause must be concluded and treated as a proceeding prosecuted *bond fide*.

The execution of a sentence of the Court of Arches in a cause of appeal is conducted and effected in the same manner, as in the other ecclesiastical courts.

The Judicial Committee, it has been seen, have the power of enforcing their own decree for costs, and also the decree which has received the affirmance of Her Majesty in Council, by means either of a writ of attachment against the person of the individual, or a writ of sequestration of his real personal estate. Both writs are prepared by the officers of the registry, and there is no substantial difference between them and the processes of the same name which are familiar to the practice of the Court of Chancery.

In the forms which I have given as illustrating the practice on appeals, I have purposely omitted the *processes*, which issue from the Judicial Committee, as well because, with the exception of the sequestration and attachment, they are, *mutatis mutandis*, the same

court-day of the said court then next ensuing, all and singular the acts enacted, exhibits, muniments, instruments, and proceedings which do in any way relate to or concern the said cause or business, in a true and authentic manner in their original forms, or true and authentic copies thereof, faithfully collated therewith and sealed with an authentic seal, so that full faith and credit may be deservedly given thereto, as well in judgment, as thereout, under pain of the law and contempt thereof. And what ye shall do or cause to be done in the premises you shall duly certify us or our surrogate, or some other competent judge in this behalf, together with these presents.

Dated at London, the 15th day of August, in the year of our Lord 1844.

This monition is served upon the registrar of the court below, and an official copy of the proceedings, pleadings, and evidence is transmitted into the registry of the Court of Appeal, authenticated by the hand of the registrar and the seal of the court. If the appeal is from the rejection of a pleading, &c., the monition will enforce the transmission of the original.

*Monition to transmit Originals.*

Herbert Jenner Fust, Knight, Doctor of Laws, Official Principal of the Arches Court of Canterbury, lawfully constituted, to all and singular clerks and literate persons, whomsoever and wheresoever in and throughout the whole province of Canterbury, greeting:

Monition to  
transmit ori-  
ginals.

Whereas we, rightly and duly proceeding in a certain cause or business of appeal and complaint of nullity,

Longden prayed the judge to pronounce for the appeal and complaint made and interposed on the part and behalf of Charles Chesterton and Samuel Hutchins, and for his jurisdiction, and that the judge, from whom this cause is appealed, hath proceeded wrongfully, nully, and unjustly; to reverse the order or decree appealed from; to retain the principal cause; and therein to admit the allegation given in the court below on the part and behalf of his (Longden's) parties, bearing date the first session of Easter Term, to wit, Thursday, the 21st day of April, 1836.

Heales prayed the judge to pronounce against the appeal and complaint made and interposed on the part of the said Charles Chesterton and Samuel Hutchins; and that the judge, from whom this cause is appealed, hath proceeded rightly, justly, and lawfully, to affirm the order or decree appealed from, and to remit the cause, and to condemn Charles Chesterton and Samuel Hutchins, Longden's parties, in costs.

The judge, having read the proofs and heard advocates and proctors on both sides thereon, by interlocutory decree, having the force and effect of a definitive sentence in writing, pronounced for the appeal and complaint made and interposed on the part and behalf of the said Charles Chesterton and Samuel Hutchins, and for his jurisdiction, and that the judge, from whom this cause is appealed, hath proceeded wrongfully, nully, and unjustly; reversed the order or decree appealed from, and retained the principal cause; and therein admitted the allegation given in the court below on the part and behalf of the said Charles Chesterton and Samuel Hutchins, bearing date the first session of Easter

Right Reverend Father in God; Henry, by Divine permission, Lord Bishop of Norwich, and Official Principal of the Episcopal Consistorial Court of Norwich, and his surrogate or surrogates, and registrar or actuary in special, and all others in general, in whose custody, power, or possession, any of the acts enacted exhibits, muniments, instruments, and proceedings; which in any wise relate to or concern the said cause, are or do now remain, to be monished in manner and form and to the effect hereinafter mentioned, (justice so requiring.) We do, therefore, hereby authorize, empower; and strictly enjoin and command you, jointly and severally, peremptorily to monish or cause to be monished, the said Worshipful William Yonge, his surrogate or surrogates, and registrar or actuary in special, and all others in general, in whose custody, power, or possession, any of the acts enacted, exhibits, muniments, instruments, and proceedings, which in any wise relate to or concern the said cause, are or do now remain, (and whom we do by virtue of these presents so monish,) that they and each of them do fully, plainly, exactly, and faithfully transmit, or cause to be transmitted, on or before the sixth day after they shall have been served with these presents, if it be a general session, bye-day, or additional court-day, of our said Arches Court of Canterbury, otherwise on the general session, bye-day, or additional court-day of our said court, then next ensuing, the original articles and schedule thereto annexed, given and admitted in the said cause, on the part and behalf of the said Samuel Gibbons and Samuel Goody, together with all and singular the original sayings and depositions of the several witnesses produced, sworn, and examined thereon,

Heales returned the monition for process.

The Registrar of the court below brought in the process.

Longden confessed the subscription of the notary and witnesses, and the identity of parties.

The Surrogate, at the petition of Heales, and on motion of council, assigned the cause for hearing before the Judicial Committee, at the Council Chamber, Whitehall, whensoever.

*Order in Council containing the Report of the  
Judicial Committee.*

Order in  
Council con-  
taining the  
report of the  
Judicial Com-  
mittee.

At the Court at Buckingham Palace,  
the 30th day of June, 1845:

Present,

The Queen's Most Excellent Majesty,  
His Royal Highness Prince Albert,

Lord President,  
Duke of Wellington,  
Earl of Lincoln,  
Lord Steward,  
Earl of Jersey,  
Earl of Haddington,  
Earl of Aberdeen,

Lord Granville Somerset,  
Lord Stanley,  
Mr. Herbert,  
Sir Robert Peel, Baronet,  
Sir James Graham, Ba-  
ronet.

Whereas there was this day read at the board a report from the Judicial Committee of the Privy Council, dated the 14th of June, 1845, in the words following, viz. :—

Whereas your Majesty was pleased, by your standing order in council of the 28th day of November, 1844, in ———— of the ———— of the 7th and 8th of your



petition, bearing date the 7th day of December, 1844, of Thomas Poynter, proctor for Emma C——, (wife of George Savage C——, Esquire,) of the parish of East Teignmouth, in the county of Devon, and within the peculiar jurisdiction of the venerable the Dean and Chapter of the Cathedral Church of Saint Peter in Exeter, the appellant from a certain decree or order of the Judge of the Arches Court of Canterbury, made and given on the 30th day of November, 1844, in a certain cause or business of divorce or separation from bed, board, and mutual cohabitation, by reason of alleged adultery, by her committed, promoted and brought by the said George Savage C—— against her, the said Emma C——, in virtue of letters of request to the Judge of the said Arches Court, under the hand of the Very Reverend Thomas Hill Lowe, Clerk, Master of Arts, Dean of the said Cathedral Church of Saint Peter in Exeter, and under the seal of the jurisdiction of the Dean and Chapter of Exeter, bearing date the 5th day of March, 1844; and whereas an appearance was afterwards given before a surrogate of this committee, by a proctor, on behalf of the said George Savage C——, the respondent in the said cause of appeal.

The Lords of the Committee, in obedience to your Majesty's said standing order of reference, took the said petition into consideration, and having read the proceedings transmitted from the court below, and heard proctors on both sides, and advocates on behalf of the appellant, did this day agree humbly to report their opinion to your Majesty against the said appeal and complaint, that the decree or order appealed from ought to be affirmed, the principal cause retained, with

all its incidents, and therein that a monition ought to be issued against the judge and registrar of the court below, and against Henry Virtue Tebbs, Notary Public, one of the Examiners of the said Arches Court, to transmit to the registry of the High Court of Admiralty and Appeals, the original libel and exhibits given in and admitted in the said cause, and the interrogatories administered to the witnesses produced and examined thereon, and the whole of the depositions taken in the said cause.

Her Majesty, having taken the said report into consideration, was pleased, by and with the advice of her Privy Council, to approve thereof and of what is therein recommended, and to order, as it is hereby ordered, that the same be duly and punctually observed, complied with, and carried into execution; whereof all persons whom it may concern are to take notice, and govern themselves accordingly.

WM. L. BATHURST.

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### ERRATA.

- For* "were," *line* 9, *page* 4, *read* even.  
 — "property," — 32, — 54, (in the note,) *read* poverty.  
 — "lawful," — 12, — 57, *read* awful.

# OFFICIAL FEES

## AND

## TAXED BILLS OF COSTS.

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OFFICIAL fees allowed under 10 Geo. IV., c. 53, ("An Act to regulate the Duties, Salaries, and Emoluments of the Officers, Clerks, and Ministers of certain Ecclesiastical Courts in England.")

<i>Judge's Fees, (Arches Court.)</i>			
	£	s.	d.
For every answer.....	0	1	0
Every definitive sentence or interlocutory decree	0	10	0
The examination of the first witness upon a libel, articles, or allegation.....	0	1	0
Every other witness on the same plea.....	0	0	6
The examination of witnesses upon every parcel of interrogatories.....	0	1	0
Common citation.....	0	1	3
Citation or decree with intimation.....	0	2	6
Decree for answers.....	0	1	3
Compulsory against witnesses.....	0	1	3
Monition.....	0	1	3
Inhibition and citation.....	0	2	6
Commission (except commission to swear executors or administrators).....	0	7	2
Remission.....	0	1	3
Excommunication.....	0	1	3
Absolution.....	0	1	3
Writ of deliverance.....	0	1	3
Relaxation.....	0	1	3
Significavit.....	0	7	2
Sealing a process.....	0	7	2
Decree by letters of request.....	0	1	3
Decree, with intimation, by letters of request...	0	2	6
Suspension.....	0	1	3

*Registrar's Fees, (Arches Court.)*

	£	s.	d.
For signing every inhibition and citation . . . . .	0	1	8
Signing every monition for process, if taken out at a subsequent time to the inhibition and citation If at the same time, no fee for this monition.	0	1	8
Every other monition . . . . .	0	2	0
Decree for answers . . . . .	0	2	0
Compulsory . . . . .	0	2	0
Remission . . . . .	0	2	0
Relaxation . . . . .	0	2	0
Decree in virtue of letters of request . . . . .	0	2	0
Significavit . . . . .	0	6	8
Writ of deliverance . . . . .	0	6	8
Excommunication . . . . .	0	2	0
Every commission for the examination of wit- nesses, or for taking answers, or for any other pur- pose, excepting commission to swear executors or administrators . . . . .	0	7	8
Entering answers to any plea filed, for the first sheet of paper, containing twelve folios of ninety words . . . . .	0	3	6
Every succeeding sheet . . . . .	0	2	0
Copy of answers, for the first sheet, containing twelve folios . . . . .	0	3	6
Every succeeding sheet . . . . .	0	2	0
Registering every extended act on a regular court-day . . . . .	0	0	4
Registering every such act on a bye-day . . . . .	0	1	0
Registering every act before the judge or his sur- rogate at chambers . . . . .	0	1	0
Attendance before the judge or his surrogate at chambers in Doctors' Commons . . . . .	0	3	6
Attendance with a surrogate, out of Doctors' Commons, but within two miles thereof . . . . .	1	1	0
Beyond two miles . . . . .	2	2	0
Every sentence or interlocutory decree . . . . .	1	2	4
Office copy of every sentence or interlocutory decree	0	6	8
Office copy of any other order or decree . . . . .	0	3	4
Attendance on an extra court-day, on the hearing of a cause, or upon any debate by counsel of an allegation or other matter, for the first day . . . . .	0	13	4

	£	s.	d.
registry to annex to any commission, if of five folios, of ninety words each, or under . . . . .	0	3	4
If exceeding five folios, per folio . . . . .	0	0	8
Collating and notarially attesting the same when the originals are delivered out . . . . .	0	5	0
Receipt for one or more pleas or exhibits delivered out at the same time to the same party . . . . .	0	1	8
In causes appealed to this court, the proctor for the appellant, (if he uses the process,) to pay one-fourth, and the proctor for the respondent, (if he uses the process,) to pay one-third of the sum allowed for the whole process, (viz., 13s. 4d., if not exceeding forty folios, of one hundred and twelve words each, and 4d. per folio if exceeding that length, besides 7s. 2d. for the seal, and the cost of the binding.)			
In causes appealed from this court, the registrar to receive, for transmitting the proceedings, if not exceeding forty folios of one hundred and twelve words each . . . . .	0	13	4
If exceeding that length, per folio of one hundred and twelve words each, (besides 7s. 2d. to the judge for the seal,) . . . . .	0	0	4
For filing every libel, allegation, or other plea, with or without exhibits annexed . . . . .	0	2	0
Filing every proxy, letter of attorney, affidavit, with or without exhibits annexed,) appeal, letters of request, and other instrument on which the registrar has no other fee . . . . .	0	2	0
Drawing and engrossing every bond given in causes of divorce, or of promoting the office of the judge, or any other bond taken under the directions of the court, excepting such for which some other fee is particularly mentioned . . . . .	0	6	8
Registering every act of guardianship . . . . .	0	2	0
Attested copy thereof . . . . .	0	3	4
Poundage of money brought into court, on paying it out, in the pound . . . . .	0	0	2
Drawing and engrossing every bond given on paying money out of court . . . . .	0	0	0
Drawing and re			
Every caveat .			
The examina			
commission.			

Out of the remaining 2s. 6d., the registrar to pay £ s. d.  
to the judge 1s. for the first witness, and 6d. for any  
other witness.

Each witness examined on interrogatories, not by  
commission.

Total to be taken 2 6

Examiner..... 1 3

0 1 3

Out of the remaining 1s. 3d., the registrar to pay  
to the judge 1s. for each set of interrogatories.

Copy of depositions not taken by commission, for  
each witness whose deposition is copied, for the first  
sheet of twelve folios, of ninety words .....

0 3 0

Every succeeding sheet .....

0 2 0

Taxing every bill of costs, where one party only  
attends .....

0 3 4

Where both parties attend, from each side .....

0 3 4

If a bill of costs exceeds five folios, of ninety  
words each, (each figure reckoned as a word,) for  
every folio after the first five, in addition to the fees  
above mentioned. ....

0 0 6

When both parties attend, a moiety of this fee to  
be paid by each side.

#### *Examiner's Fees.*

On examination not by commission :

Examining a witness in chief .....

5 0

Registrars .....

2 6

0 2 6

Examining a witness on interrogatories ..

2 6

Registrars .....

1 3

0 1 3

Drawing and engrossing the depositions, per folio  
of ninety words .....

0 0 8

Examination of a witness without previous notice  
to the examiner .....

0 6 8

For disappointment, after waiting for the witness  
an hour .....

0 6 8

Attesting a witness out of the examiner's office,  
to compare exhibits with documents deposited else-  
where,—if in Doctors' Commons .....

0 6 8

If out of Doctors' Commons, but within two miles  
thereof .....

1 1 0

If more than two miles .....

2 2 0

	£	s.	d.
Attending to take the deposition of a witness at his own residence, if not more than two miles from Doctors' Commons .....	1	1	0
If more than two miles .....	2	2	0
For copy of each deposition, for the first sheet, containing twelve folios of ninety words .....	3	6	
Registrar .....	1	0	
	0	2	6
For every other sheet of the same length .....	0	2	6
On examinations by commission :			
Taking examination of witnesses on a commission, for each day, from ten to four .....	2	2	0
If the examination of a witness continues beyond six hours of any one day, for every hour extra ....	0	6	8
From the adverse party for each set of interrogatories, whatever may be the number of witnesses examined .....	0	10	6
For drawing and engrossing special return to a commission, and attesting the execution thereof ...	1	1	0

*Beadle's Fees.*

Serving a decree for answers, or a monition on a registrar or proctor .....	0	2	6
Serving a decree for answers on a party in town, or serving any other process in town .....	0	5	0
Serving any process in the country .....	0	7	6
Serving any process in the country, upon two or more persons not residing in or near the same place, for service on each person .....	0	7	6
Serving any process in the country on two or more persons residing in or near the same place, for service on the first person .....	0	7	6
For service on each other person .....	0	5	0
For expenses on serving process in the country, for each mile from Doctors' Commons to the place of service .....			
Examining			
if executed			
If executed			
Attending			
(beside			
Inquiring			
per			

	£	s.	d.
Every sentence or interlocutory decree given by the court .....	0	1	0
Attending the hearing of a cause, debate of allegation, or any other matter, on an extraordinary day, not being a court-day, from the prevailing party .....	0	5	0

*Judge's Fees, (Prerogative Court.)*

For every sentence or interlocutory decree where the effects are of the value of £20 or upwards .....	1	0	0
For every interlocutory decree where the effects are under the value of £20. ....	0	10	0
For the first witness examined in chief (not by commission) .....	0	1	0
For every other witness so examined .....	0	0	6
For the first witness examined, (not by commission,) on every set of interrogatories .....	0	1	0
For every personal answer .....	0	1	0
Special commission or requisition .....	0	7	2
Citation .....	0	1	8
Transmission of proceedings on appeal .....	0	7	2
Decree .....	0	0	4
Significavit .....	0	7	2
Monition .....	0	0	4
Compulsory .....	0	0	4
Exemplification .....	0	7	2
Writ of deliverance .....	0	0	4

*Fees taken by the Entering Clerk for the Use of the Registrars and Deputies.*

Signing monition .....	0	2	0
Filing act to lead the same, on a regular court-day ..	0	0	4
On any other court-day, or before a surrogate ..	0	1	0
Signing compulsory .....	0	2	0
Filing act to lead the same on a regular court-day ...	0	0	4
On any other court-day, or before a surrogate ..	0	1	0
Signing decrees for which no other fee is specified, if without intimation .....	0	2	0
If with intimation .....	0	3	0
Filing act to lead decree in either case, on a regular court-day .....	0	0	4
On any other court-day, or before a surrogate ..	0	1	0
Signing significavit .....	0	6	8
On a regular court-day .....	0	0	4
On a surrogate ..	0	1	0



TAXED BILLS OF COSTS.

933

	£	s.	d.
Writ of deliverance .....	0	6	8
Filing act, if on a regular court-day .....	0	0	4
On any other court-day, or before a surrogate ..	0	1	0
Special commission .....	0	6	8
Filing act, if on a regular court-day .....	0	0	4
On any other day, or before a surrogate .....	0	1	0
Special requisition .....	0	7	8
Filing act, if on a regular court-day .....	0	0	4
On any other court-day, or before a surrogate ..	0	1	0
Entering answers :			
First sheet of twenty-four folios, of ninety words each .....	0	3	6
Every sheet of 24 folios after the first .....	0	2	0
Copy of answers :			
First sheet of twelve folios .....	0	3	6
Every sheet of twelve folios after the first .....	0	2	0
Depositions taken without commission, each witness in chief.			
Total .....	5	0	
Examiner ..	2	6	
	—	0	2 6
(Out of the remaining 2s. 6d., the registrars pay to the judge 1s. for the first witness, and 6d. for every other witness.)			
Each witness examined, (without commission,) on interrogatories			
Total .....	2	6	
Examiner ....	1	3	
	—	0	1 3
Out of the remaining 1s. 3d., the registrars pay to the judge 1s. for the first witness on every set.)			
Copy of depositions taken without commission, each witness whose deposition is copied .....	0	1	0
Copy of depositions taken by commission :			
Each sheet of twelve folios, of ninety words each	0	2	0
Each witness whose deposition is copied .....	0	1	0
Copy of exhibit or script :			
If of six folios, of ninety words each, or under ..	0	3	6
If exceeding six folios, per folio .....	0	0	8
Fac simile copies, per folio more .....	0	0	1
Collating the same when the originals are delivered out .....	0	5	0
Receipt for one or more exhibits or scripts delivered out at the same time to the same party .....	0	1	8
Copy of interlocutory or sentence act .....	0	6	8
Copy of any other act of court .....	0	3	6

	£	s.	d.	
Within two miles of Doctors' Commons.....	1	1	0	
Beyond two miles .....	2	2	0	
Attendance on extra court-days, or hearing of causes, allegations, or petitions, first day .....	0	13	4	
Every extra day after the first.....	0	6	8	
Receipt for papers decreed to be delivered out of court	0	1	8	
Taxing every bill of costs where one party only at- tends .....	0	3	4	
Where both parties attend, from each side.....	0	3	4	
If a bill of costs exceeds five folios of ninety words each, (each figure reckoned as a word,) for every folio after the first five, in addition to the fees above mentioned	0	0	6	
Where both parties attend, a moiety of this fee to be paid by each side.				
Interlocutory fee .....	£1	7	8	
Judge.....	£1	0	0	
Apparitor .....	0	1	0	
		1	1	0
		0	6	8
Sentence fee .....	£1	8	8	
Judge.....	£1	0	0	
Apparitor .....	0	1	0	
		1	1	0
		0	7	8
Where the effects are under the value of £20, half fees only are taken on interlocutory or sentence.				
Transmitting copies of proceedings to the Court of Appeal, (exclusive of the fee of 7s. 2d. for the judge's seal,) per folio of one hundred and twelve words .....	0	0	4	

EXAMINER'S AND APPARITOR'S FEES THE SAME AS IN THE  
ARCHES COURT.

*The Taxed Costs of a Promoter in a Matrimonial Cause.*

Proctor's retaining fee .....	0	5	0
Drawing citation .....	0	6	8
Engrossing same .....	0	3	4
Paid fees of same under seal and extracting .....	0	7	2
Copy thereof for service .....	0	3	4

TAXED BILLS OF COSTS.

935

	£	s.	d.
Drawing and engrossing certificate of service .....	0	2	8
Drawing and engrossing affidavit in verification thereof	0	3	4
Drawing proxy .....	0	6	8
Engrossing same .....	0	3	4
Attending and retaining Dr. Addams as counsel .....	0	3	4
Paid his fee .....	1	1	0
Extra Court.—Attending in court when I exhibited special proxy under the hand and seal of my party, and returned the citation duly executed, whereupon a proctor appeared thereto on behalf of the party cited, and exhibited a proxy under the hand and seal of his party, and prayed a libel, and I was assigned to libel next court, and act .....	0	7	4
Paid filing the proxy .....	0	2	0
Perusing and considering certificate of marriage .....	0	1	8
Copy thereof for the use of the cause .....	0	1	8
Drawing libel, thirty folios of ninety words each, at 8d. per folio .....	1	0	0
Fair copy thereof for counsel to peruse and settle ....	0	10	0
Attending counsel and feeing him to peruse and settle same .....	0	6	8
Paid his fee .....	2	2	0
Engrossing same as settled, at 6d. per folio .....	0	15	0
Copy of the libel for the adverse proctor .....	0	10	0
The like of the exhibit .....	0	1	8
The like copies for my counsel .....	0	11	8

*Michaelmas Term Fee.*

0 5 0

First Session.—Attending in court when I brought in libel with exhibit annexed, and the judge, at my pe- tition, assigned to hear on admission thereof the next session, and act .....	0	5	0
Paid filing libel .....	0	2	0
Adverse proctor having signified his intention of op- posing the admission of the libel and exhibit, draw- ing case for the use of counsel to argue for the admission thereof, (according to length, at 8d. per folio) .....	—	—	—
Copy thereof for his use .....	—	—	—
Attending him therewith and feeing him to argue for the admission of the libel and exhibit .....	0	6	8
Paid his fee .....	3	3	0

	£	s.	d.
Second Session.—Attending informations . . . . .	0	6	8
Fee when the judge, having heard some informations of counsel and proctors on both sides, assigned to hear further informations next court, and act . . . . .	0	5	0
Attending counsel and refreshing him for further informations . . . . .	0	6	8
Paid his refreshing fee . . . . .	2	2	0
Third Session.—Attending further informations . . . . .	0	6	8
Fee when the judge, having heard all informations, took time to deliberate until next court, and act . . . . .	0	5	0
Attending counsel and seeing him to attend judgment . . . . .	0	3	4
Paid his fee . . . . .	1	1	0
Fourth Session.—Attending judgment . . . . .	0	6	8
Fee when the judge admitted the libel and exhibit; whereupon adverse proctor confessed the marriage as pleaded therein, but otherwise contested suit negatively, and I was assigned to prove and act . . . . .	0	5	0
Attending before a surrogate in his chambers, when I produced as a witness on my libel and exhibit A. B., who was sworn and monished as usual, and act . . . . .	0	7	4
Paid registrar's attendance and surrogate's fee . . . . .	0	4	6
Reading over the libel, and designing the said witness thereto . . . . .	0	3	4
Drawing designation and fair copies thereof for the examiner and adverse proctor . . . . .	0	3	4
Attending the examiner and fixing time for the examination of the witness . . . . .	0	3	4
(These charges will apply to any witness.)			

*Hilary Term Fee.* 0 5 0

First Session.—Attending in court when I prayed publication and all facts to be propounded, whereupon adverse proctor asserted a responsive allegation, and the judge assigned to hear on admission thereof next court, and act . . . . .	0	5	0
Second Session.—Attending in court when adverse proctor brought in his asserted allegation, and the judge assigned to hear on the admission thereof next court, and act . . . . .	0	5	0

TAXED BILLS OF COSTS.

937

	£	s.	d.
Paid his fee .....	2	2	0
Attending adverse proctor, and giving him notice that I should not oppose the admission of his responsive allegation .....	0	6	8
Third Session.—Attending in court when the judge, at the petition of adverse proctor, admitted his re- sponsive allegation, and assigned me to give in my client's answers thereto next court, and act .....	0	5	0
Drawing my client's personal answers to the respon- sive allegation, (forty folios) .....	1	6	8
Copy thereof for counsel to peruse and settle .....	0	13	4
Attending counsel and feeing him to peruse and settle same .....	0	6	8
Paid his fee .....	2	2	0
Engrossing same .....	1	0	0
Attending before a surrogate in his chambers, when my party produced himself for his personal answers to the responsive allegation, and having been sworn duly to answer as usual, he brought in the same, subscribed by him, and was repeated thereto as usual, and act .....	0	7	4
Paid the surrogate's fee and registrar's attendance....	0	4	6
Paid setting out the answers .....	—	—	—
Attending before a surrogate in his chambers when ad- verse proctor produced as witnesses, on his respon- sive allegation, C. D. and E. F., who were sworn and monished as usual .....	0	5	0
Drawing interrogatories, thirty folios .....	1	0	0
Fair copy thereof for counsel to peruse and settle ....	0	10	0
Attending counsel and feeing him to peruse and settle	0	6	8
Paid his fee .....	2	2	0
Engrossing same .....	0	15	0
Perusing and considering the designation of C. D., the witness, and designing him to my interrogatories ..	0	3	4
Drawing and fair copy of designation .....	0	3	4
Attending the examiner therewith .....	0	3	4
Perusing and considering the designation of E. F., the witness, and attending adverse proctor, informing him that I should not administer any interrogatories to such witness .....	0	6	8
Bye-day.—Attending in court, when the judge, at the petition of both proctors, decreed publication to pass, and assigned all facts to be propounded next court, and assigned to hear, on admission of exceptive alle- gations, if any, at the same time, and act .....	0	7	4

	£	s.	d.
Attending the examiner and bespeaking copy of the depositions on my libel and exhibit . . . . .	0	6	8
Paid his fees for examining my witnesses, and for copy of their depositions, and collating . . . . .	—	—	—
(This charge, besides the disbursement, is a third of the examiner's charge for the copy.)			
Perusing and considering the depositions, at 2d. per folio	—	—	—
Copy thereof for counsel, at 4d. per folio . . . . .	—	—	—
Attending the examiner and bespeaking copy of the depositions taken by him on the responsive allegation . . . . .	0	6	8
Paid for same, and collating . . . . .	—	—	—
Perusing and considering the depositions . . . . .	—	—	—
Copy thereof for counsel . . . . .	—	—	—
Extra Court.—Attending in court when both proctors declared they gave no allegation exceptive to the testimony of witnesses, and the judge concluded the cause and assigned the same for informations and sentence on the next court, and act . . . . .	0	7	4
Attending adverse proctor and bespeaking copy of his interrogatories . . . . .	0	3	4
Paid for same clerk's fee and collating, (a third of the disbursement is added,) . . . . .	—	—	—
Perusing and considering same . . . . .	—	—	—
Copy thereof for counsel . . . . .	—	—	—
Drawing case for counsel at the hearing, fifty folios . .	1	6	8
Copy thereof for his use . . . . .	0	13	4
Attending him with the case and papers, and feeing him for the hearing . . . . .	0	13	4
Paid his fee . . . . .	10	10	0
Attending in the registry, bespeaking the canonical bond . . . . .	0	5	0
Paid for same and stamp . . . . .	2	1	8
Attending when a person on behalf of my party and surety executed same . . . . .	0	5	0
Drawing sentence . . . . .	0	6	8
Engrossing same . . . . .	0	5	0
Attending counsel to sign same . . . . .	0	3	4
Attending in the registry, looking up the papers for the judge . . . . .	0	6	8
A consultation being desired, attending my counsel, feeing him, and fixing a time for same . . . . .	0	6	8
Paid his fee . . . . .	2	2	0
The clerk . . . . .	0	5	0
Attending consultation prior to the hearing . . . . .	0	6	8

**TAXED BILLS OF**

*Easter Term Fe*

First Session.—Attending informations  
Fee when the judge, having heard in  
counsel and proctors on both sides  
cause for sentence the next court, and  
Attending and feeing counsel to attend  
Paid his fee . . . . .  
Second Session.—Attending judgment  
Fee when the judge signed the definit  
me porrected, pronouncing and decre  
contained, and act . . . . .  
Paid fees of sentence . . . . .  
Attending in the registry and bespeakin  
Paid for same and collating. . . . .  
Clerks and officers of court. . . . .  
Letters and messengers . . . . .  
Sportulage . . . . .  
Drawing this bill of costs. . . . .  
Copy thereof for the registrar . . . . .  
The like for the adverse proctor . . . . .  
Attending them therewith, and fixing  
Attending taxation . . . . .  
Paid registrar's fee . . . . .  
Attending adverse proctor, receiving  
these costs, and giving receipt for s  
Paid for receipt stamp . . . . .

*The Taxed Costs of a Defea  
in a Matrimonia*

Proctor's retaining fee . . . . .  
Attending and retaining Dr. H. as cou  
Paid his fee . . . . .  
A like attendance on and fee to Dr. J  
Drawing and engrossing proxy . . . . .  
Third Session,—Attending in court  
nroctor exhibited a proxy under t

	£	s.	d.
Paid filing proxy .....	0	2	0
Bye-Day.—Attending in court, when adverse proctor brought in libel with exhibits annexed, A and B, and the judge assigned to hear, on admission thereof, the extra court-day in August next .....	0	5	0
Act and registering .....	0	2	4
Perusing and considering the libel (forty-three folios) .....	0	7	2
Copy thereof for Dr. H. ....	0	14	4
The like for Dr. J. ....	0	14	2
Perusing and considering exhibit A, (certificate of marriage) .....	0	1	8
Copy thereof for Dr. H. ....	0	1	8
The like for Dr. J. ....	0	1	8
Perusing and considering exhibit B, twelve folios ....	0	3	4
Copy thereof for Dr. H. ....	0	4	0
The like for Dr. J. ....	0	4	0
Attending Dr. H. with the said copies of the libel and exhibits, and feeing him to peruse same and advise if opposable .....	0	6	8
Paid his fee .....	2	2	0
The like attendance and fee to Dr. J. ....	2	8	8
Extra Court.—Attending in court when the judge, at the petition of adverse proctor, admitted the libel and exhibits, and I confessed the marriage, but otherwise contested suit negatively, and adverse proctor was assigned to prove and act.....	0	7	4
Attending before a surrogate in his chambers, when adverse proctor produced as a witness on his libel and exhibit, A. B., who was sworn and monished as usual .....	0	5	0
Drawing interrogatories .....	0	13	4
Copy thereof for counsel to peruse and settle, twenty folios.....	0	6	8
Attending Dr. H. therewith and feeing him to peruse and settle same.....	0	6	8
Paid his fee .....	1	1	0
The like fee and attendance on Dr. J.....	1	7	8
Engrossing the interrogatories .....	0	10	0
Perusing and considering the designation of the witness, and designing the witness to my interrogatories .....	0	3	4
.....	0	0	0



# TAXED BILLS OF COSTS.

941

	£	s.	d.
<i>Michaelmas Term Fce.</i>	0	5	0
First Session.—Attending in court when the judge decreed publication and assigned all facts to be propounded next court, and act .....	0	5	0
Attending the examiner and bespeaking copy of the depositions .....	0	6	8
Paid for office copy thereof and collating .....	—	—	—
Perusing and considering the depositions .....	—	—	—
Copy thereof for Dr. H. ....	—	—	—
The like for Dr. J. ....	—	—	—
Second Session.—Attending in court, when I declared that I gave no allegation exceptive to the testimony of witnesses, and the judge concluded the cause and assigned the same for informations and sentence next court, and act .....	0	5	0
Drawing case for the use of counsel at the hearing ...	1	6	8
Copy thereof for Dr. H. ....	0	13	4
Attending him with the case and papers and feeing him for the hearing .....	0	13	4
Paid his fee .....	5	5	0
Copy of the case for Dr. J. ....	0	13	4
Like attendance and fee to him .....	5	18	4
Attending in the registry, looking up the papers for the judge .....	0	1	0
Drawing and engrossing prayer for the hearing.....	0	3	4
Fourth Session.—Attending informations .....	0	6	8
Fee when the judge pronounced for the divorce, and assigned to hear on taxation of my costs .....	0	5	0
Drawing this bill of costs, (as before.)			

## *Taxed Costs in a Testamentary Cause.*

Proctor's retaining fee .....	0	5	0
Perusing and considering copy of decree served upon my client, and advising with him thereon .....	0	6	8
Attending and retaining Dr. Haggard .....	0	3	4
Paid his fee .....	1	1	0
The like attendance and fee to Dr. Jenner .....	1	4	4
Drawing proxy .....	0	6	8
Engrossing same .....	0	3	4
Writing therewith and instructions for the execution thereof .....	0	3	4
Fourth Session.—Attending in court, when I appeared to the decree and exhibited the proxy of my party,			

and the judge assigned both proctors to bring in affidavits of scripts next court, and act .....	£	s.	d.
	0	5	0
Drawing affidavit of scripts .....	0	4	0
Engrossing same .....	0	3	4
Oath thereto and attendance .....	0	6	0
Copy of the affidavit for Dr. Haggard .....	0	2	0
The like for Dr. Jenner .....	0	2	0
Bye-Day.—Attending in court, when both proctors brought in affidavits of scripts and I declared, I opposed the script A, whereupon adverse proctor propounded same, and brought in an allegation, and the judge assigned to hear an admission thereof next court, and act .....	0	7	4
Paid for copy of adverse proctor's affidavit of scripts, clerk's fee, and collating .....	0	3	4
Perusing and considering same .....	0	1	8
Copy thereof for Dr. Haggard .....	0	2	0
The like for Dr. Jenner .....	0	2	0
Paid for copy script A, clerk's fee, and collating (two folios) .....	0	1	4
Perusing and considering same and copies .....	0	2	0
Perusing and considering copy of adverse allegation (twelve folios) .....	0	3	4
Copy thereof for Dr. Haggard .....	0	4	0
The like for Dr. Jenner .....	0	4	0
Attending Dr. Haggard with the allegation and feeing him to peruse same and advise if opposable .....	0	3	4
Paid his fee .....	1	1	0
The like attendance and fee to Dr. Jenner .....	1	4	4
Caveat Day.—Attending in court, when the judge admitted adverse proctor's allegation, I not opposing same, and assigned me to give in my client's answer thereto within fourteen days, and act .....	0	7	4
Drawing answer (twenty folios) .....	0	13	4
Copy for counsel to peruse and settle .....	0	6	8
Attending Dr. Haggard therewith and feeing him to peruse and settle same .....	0	3	4
Paid his fee .....	1	1	0
The like fee and attendance on Dr. Jenner .....	1	4	4
Engrossing same .....	0	10	0
Drawing and engrossing order of court to lead commission to swear my party to his answers .....	0	3	4
Paid office fees of commission under seal and extracting .....	1	0	10
Drawing and engrossing certificate of the execution of the commission .....	0	2	8

**TAXED BILLS OF COSTS.**

**948**

	£	s.	d.
Writing with the commission and instructions to execute same .....	0	5	0
Copy of adverse allegation to annex to the commission .....	0	4	0
Perusing and considering act of court to lead commission to examine witnesses on the allegation, and copy for the use of the cause .....	0	3	4
Attending adverse proctor, writing to, and signing the act .....	0	3	4
Paid one counsel's fee for settling interrogatories ....	2	2	0
Engrossing interrogatories .....	1	2	0
Copy thereof for Dr. Haggard .....	0	14	8
The like for Dr. Jenner .....	0	14	8
Attending before a surrogate in his chambers, when I returned the commission with my party's answers annexed, and act .....	0	7	4
Paid surrogate's fee and registrar's attendance .....	0	4	6
Copy of my party's answers for Dr. Haggard .....	0	6	8
The like for Dr. Jenner .....	0	6	8
Attending the execution of commission at fourteen days .....	29	0	0
Travelling expenses there and back (four hundred miles)	20	0	0
Paid proportion of tavern bill .....	—	—	—

*Easter Term Fee.*

0 5 0

<b>First Session.</b> —Attending in court, when a proctor, on behalf of the commissioners, returned the commission with the examinations closely sealed up, and the judge directed same to be opened for the purpose only of inspecting the return, whereupon adverse proctor prayed publication, and I asserted an allegation, and the judge assigned to hear on admission thereof next court, and act .....				0	5	0
Attending in the registry, looking up, and inspecting the return .....				0	3	4
<b>Second Session.</b> —Attending in court, when the assignation was continued, and act .....				0	5	0
Drawing my allegation (one hundred and twenty folios)				4	0	0
Copy thereof, for counsel to peruse and settle .....				2	0	0
Attending Dr. Haggard therewith, and feeing him to peruse and settle same .....				0	6	8
Paid his fee .....				4	4	0
The like fee and attendance on Dr. Jenner .....				4	10	8
<b>Third Session.</b> —Attending in court, when the assignation was continued, and act .....				0	5	0

	£	s.	d.
Engrossing the allegation .....	3	0	0
Fourth Session.—Attending in court, when I brought in my allegation, and the judge assigned to hear on admission thereof next court, and act.....	0	5	0
Sportulage .....	0	2	8
Letters, messengers, postage, &c. ....	0	5	0
Clerks and officers of court .....	0	3	6
<i>Trinity Term Fee.</i>	0	5	0
First Session.—Attending in court, when the judge, at petition of adverse proctor, continued the assigna- tion to the second session, and act .....	0	5	0
Second Session.—Attending in court, when the judge admitted my allegation, and assigned adverse proctor to give in his client's answers thereto next court, and act.....	—	—	—
Attending before a surrogate in his chambers, when I produced, as a witness on my allegation, A. B., who was sworn and monished as usual, and act.....	0	7	4
Paid registrar's attendance and surrogate's fee .....	0	4	6
Reading over my allegation and designing the witness thereto .....	0	3	4
Drawing a fair copy of designation .....	0	3	4
Attending the examiner therewith .....	0	3	4
Drawing and engrossing order of court to lead com- pulsory against C. D., another witness .....	0	6	8
Drawing compulsory (eight folios) .....	0	5	4
Engrossing same and parchment .....	0	5	6
Paid office fees of same under seal .....	0	2	8
Extracting fee .....	0	6	8
Copy of the compulsory for service .....	0	2	8
Drawing and engrossing certificate of service .....	0	2	8
The like of affidavit .....	0	3	4
Writing my client therewith, with instructions for the service thereof .....	0	3	4
Attending Mr. , and paying him the amount of his charges for serving the compulsory..	0	6	8
Paid same.....	1	12	6
Attending before a surrogate in his chambers, when adverse proctor returned commission with the an- swers of his party annexed .....	0	5	0
Attending in the registry and bespeaking office copy of the answers .....	0	6	8
Paid for same and collating (one-third added to the office charge) .....	1	3	4

TAXED BILLS OF COSTS.

945

	£	s.	d.
Perusing and considering same (seventy-eight folios)	0	13	0
Copy thereof for Dr. Haggard .....	1	6	0
The like for Dr. Jenner .....	1	6	0
Attending Dr. Jenner therewith and feeling him to peruse same and advise if sufficient.....	0	6	8
Paid his fee.....	2	2	0
The like attendance and fee to Dr. Haggard .....	2	8	8
Consulting with my client and taking instructions for the commission to examine my witnesses .....	0	3	4
Drawing order of court to lead commission.....	0	6	8
Engrossing same.....	0	3	4
Attending adverse proctor therewith .....	0	3	4
Paid office fees of commission under seal.....	0	14	2
Extracting fee.....	0	6	8
Paid for office copy of my allegation to annex thereto, and collating (one-third added to the office charge)	—	—	—
Attending the examiner and engaging him for the commission.....	0	6	8
Attending the execution of the commission at (thirty-one days).....	64	1	0
Travelling expenses there and back (four hundred miles)	20	0	0
Paid tavern bill for self and examiner.....	—	—	—
Paid commissioner's fees.....	27	6	0
Paid sexton for opening the church .....	0	5	0

*Michaelmas Term Fee.*

0 5 0

First Session.—Attending in court, when the judge, at my petition, decreed publication, and assigned to hear on admission of exceptive allegations, if any, next court, and act .....	0	5	0
Attending the examiner and bespeaking copies of the depositions taken on the adverse allegation, in town	0	6	8
Paid his charges for same and extra labour, &c., and collating .....	—	—	—
Perusing and considering same .....	—	—	—
Copy thereof for Dr. Haggard .....	—	—	—
The like for Dr. Jenner .....	—	—	—
Attending in the registry and bespeaking copy of the depositions on the adverse allegation, taken by com- mission .....	0	6	8
Paid for office copy and collating .....	—	—	—
Perusing and considering same .....	—	—	—
Copies for counsel .....	—	—	—
Attending the examiner and bespeaking copies of my depositions taken in town .....	0	6	8

	£	s.	d.
Paid his charges for same, extra labour, &c., and collating .....	—	—	—
(Perusing and copies as before.)			
Attending in the registry and bespeaking office copy of the depositions on my allegation by commission	0	6	8
Paid for same and collating, &c., &c., as before.....	—	—	—
Attending adverse proctor and bespeaking copy of his interrogatories .....	0	6	8
Paid for same, clerk's fee, and collating, (one-third added to the copy, which is supplied by the clerk at 4d. per folio) .....	—	—	—
Perusing and considering same .....	—	—	—
Copies for counsel .....	—	—	—
Second Session.—Attending in court, when both proctors declared they gave no exceptive allegations, and the judge assigned the cause for informations and sentence on the second assignation whensoever, and act .....	0	5	0
Drawing case for counsel at the hearing, (one hundred folios) .....	3	6	8
Copy thereof for Dr. Haggard .....	1	13	4
The like for Dr. Jenner .....	1	13	4
Attending Dr. Haggard with the case and papers, and feeding him for the hearing .....	1	13	4
Paid his fee.....	42	0	0
The like attendance and fee to Dr. Jenner.....	43	13	4
Attending in the registry, looking up the papers for the judge .....	0	6	8
Drawing and engrossing my prayer .....	0	6	8
A consultation being desired, attending Dr. Haggard and fixing time for same .....	0	13	4
Paid his fee.....	5	5	0
His clerk .....	0	5	0
The like attendance and fee to Dr. Jenner.....	5	13	4
Attending consultation prior to the hearing.....	0	13	4
Fourth Session.—Attending informations .....	1	1	0
Fee when the judge, having heard some informations, assigned the cause for further informations on the day of instant, and act....	0	5	0
Attending Dr. Haggard and refreshing him for the further hearing.....	0	13	4
Paid his fee .....	5	5	0
The like attendance and fee to Dr. Jenner.....	5	13	4
Attending further informations .....	1	1	0
Fee when the judge, having heard all informations, assigned the cause for sentence whensoever, and act	0	7	4

TAXED BILLS OF COSTS.

947

	£	s.	d.
Paid registrar's attendance .....	0	3	6
Attending Dr. Haggard and feeing him to attend the judgment .....	0	6	8
Paid his fee .....	2	2	0
The like attendance and fee to Dr. Jenner .....	2	8	8
Sportulage .....	0	2	8
Letters, messengers, postage, &c. ....	0	5	0
Clerks and officers of court .....	0	3	6

*Hilary Term Fee.*

	0	5	0
First Session.—Attending long judgment .....	1	1	0
Fee when the judge pronounced against the force and validity of the pretended codicil propounded, and condemned the adverse party in costs, and acts. ....	0	5	0
Paid interlocutory fees .....	1	8	8
Sportulage .....	0	6	8
Clerks and officers of court .....	0	6	8
Letters, messengers, &c. ....	1	1	0
Drawing bill of costs, &c., and taxing fees (as before)	—	—	—
Engrossing same and parchment .....	—	—	—
Attending counsel to sign same .....	0	3	4
Paid his fee .....	0	10	6
Third Session.—Attending in court, when I porrected my bill of costs, which the judge, on the report of the registrar, taxed at the sum of £ , and paid fee, and act .....	0	6	0
Drawing and engrossing order of court to lead monition. ....	0	10	0
Drawing monition .....	0	6	8
Engrossing same and parchment .....	0	7	6
Paid fees of monition under seal .....	0	2	4
Extracting fee .....	0	6	8
Copy of monition for service .....	0	3	4
Drawing and engrossing certificate of service .....	0	2	8
The like of affidavit .....	0	3	4
Attending the officer of the court and instructing him to serve the monition .....	0	6	8
Paid his fee for same .....	0	8	0
Fourth Session.—Attending in court, when I returned the monition and the judge continued the certificate thereof to next court, and act .....	0	5	0
Drawing and fair copy of notice of contempt to serve upon the adverse party .....	0	5	0
Attending and serving same .....	0	6	8

	£	s.	d.
Drawing and engrossing affidavit of non-payment of costs, to be made by my party .....	0	5	0
Oath thereto and attendance .....	0	7	8
Drawing and engrossing the like affidavit, to be made by myself .....	0	5	0
Oath thereto and attendance .....	0	7	8
Drawing statement to be laid before the judge to lead my application to put adverse party in contempt, (eight folios) .....	0	5	8
Copy thereof for the judge ....	0	2	10
The like for the registrar .....	0	2	10
Attending in the registry with the statement and affidavits, and directing them to be sent to the judge..	0	6	8
Bye-day.—Attending in court, when the judge, at my petition, pronounced the adverse party in contempt for non-payment of costs, and decreed his contempt to be signified, and act .....	0	7	4
Attending and conferring with adverse proctor, who informed me the matter would be settled, and afterwards receiving the amount of my taxed costs from him .....	0	6	8
Paid for receipt stamp .....	—	—	—
	£		

*The Taxed Costs of Appellant in the Judicial Committee.*

Proctor's retaining fee .....	0	13	4
Attending in the registry of the court below and bespeaking office copy of the minute in which my appeal was alleged .....	0	6	8
Paid for same and collating .....	0	10	2
Copy thereof for the use of the cause .....	0	3	4
Drawing petition of appeal .....	0	6	8
Engrossing same .....	0	3	4
Attending in the registry, filing petition and appeal ..	0	6	8
Paid the registrar's fee for transmitting my petition and messenger .....	0	9	2
Paid filing appeal .....	0	4	0
Perusing notice from the registrar that he had received a letter from the clerk of the council, signifying that the appeal had been referred to the Judicial Committee .....	0	3	4



TAXED BILLS OF COSTS.

949

	£	s.	d.
Paid registrar's fee thereon .....	0	6	8
Attending before a surrogate, when the registrar alleged that he had received the said letter, and act .....	0	10	8
Paid registrar's attendance and surrogate's fee .....	0	9	0
Paid Council Chamber's fee on such reference .....	3	2	6
Drawing and engrossing proxy .....	0	13	4
Writing to my party therewith and instructions for the execution thereof .....	0	5	0
Attending and retaining Dr. Haggard .....	0	13	4
Paid his fee .....	2	2	0
His clerk .....	0	5	0
The like attendance on and fees to Dr. Harding and clerk .....	3	0	4
Attending before a surrogate, when I prayed an inhi- bition and citation and monition for process, which he decreed, and act .....	0	10	8
Paid registrar's attendance and surrogate's fee .....	0	7	8
Drawing order of court to lead inhibition and citation	0	10	0
Engrossing same .....	0	5	0
Paid fees of inhibition and citation under seal, and ex- tracting .....	1	18	11
Copy thereof for service on the registrar of the court below .....	0	6	8
The like for respondent's proctor .....	0	6	8
Attending the officer and instructing him to serve ..	0	6	8
Drawing and engrossing certificate and affidavit of service .....	0	6	8
Paid the officer's fee for service .....	0	14	8

*Hilary Term Fee.*

0 6 8

First Session.—Attending in court, when I returned the inhibition and citation, and exhibited a proxy under the hand and seal of my party, and when a proctor appeared for and exhibited a proxy under the hand and seal of respondent, and I was assigned to libel next court, and act .....	0	8	8
Paid filing proxy .....	0	4	0
Drawing libel of appeal .....	1	0	0
Copy thereof for counsel to peruse and settle .....	0	10	0
Attending Dr. Haggard therewith and seeing him to peruse and settle same .....	0	6	8
Paid his fee .....	1	1	0
Engrossing libel as settled .....	0	10	0

	£	s.	d.
Copy thereof for adverse proctor .....	0	10	0
Second Session.—Attending in court, when I brought in the libel, and the surrogate assigned to hear on admission thereof next court, and act.....	0	6	8
Paid filing the libel ... ..	0	4	0
Third Session.—Attending in court, when the surro- gate admitted the libel, and adverse proctor gave a negative issue thereto, and I was assigned to prove, and act .....	0	8	8
Paid fees of monition for process under seal, and ex- tracting .....	1	7	9
Copy for service .....	0	3	6
Attending the officer and instructing him to serve same .....	0	6	8
Drawing and engrossing certificate.....	0	3	4
The like of affidavit of service.....	0	3	4
Paid officers' fee for service.....	0	7	4
Fourth Session.—Attending in court, when I returned the monition for process, and the certificate was continued to the bye-day, and act .....	0	8	8
Attending in the registry of the court below and ad- vancing and paying the fees for the process and the transmission thereof.....	0	6	8
Paid for same .....	2	9	8
Bye-day,—Attending in court, when a proctor, on be- half of the registrar of the court below, brought in the process, and I alleged the appeal to be therein contained, and the surrogate assigned the cause for hearing on the first assignation next court, and act .....	0	10	8
Drawing case for informations before the surrogate..	1	6	8
Copy for Dr. Haggard.....	0	13	4
Attending him therewith and feeing him .....	0	6	8
Paid his fee .....	3	3	0
His clerk .....	0	5	0
Second Session.—Attending informations.....	0	13	4
Fee when the surrogate assigned the cause for hearing on the second assignation, before the Judicial Com- mittee, and act.....	0	8	8
Paid registrar's attendance .....	0	6	8
Attending in the registry and compounding for the use of the process .....	0	6	8
Paid composition fee .....	0	9	8
Perusing and considering the process and abstracting same .....	0	16	8

**TAXED BILLS OF COSTS.**

**951**

	£	s.	d.
Making list of the papers which I proposed to be printed in a joint appendix .....	0	6	8
Copy thereof for respondent's proctor, and attending him therewith and settling same.....	0	6	8
Moiety of the fee for drawing the joint appendix —	2	5	0
Copy of the whole for my counsel to peruse and settle Conference with adverse proctor, and agreeing to a joint case .....	0	6	8
Moiety of the fee for drawing case for the hearing ..	0	18	0
Copy of the whole for my counsel to peruse and settle Attending Dr. Harding with the case and appendix, and feeing him to peruse and settle same .....	0	13	4
Paid his fee .....	5	5	0
His clerk .....	0	5	0
The like attendance on and fees to Dr. Haggard and clerk .....	6	3	4
Copy of the appendix for the printer .....	2	5	0
Attending him therewith and instructing him to print same .....	0	13	4
Perusing and correcting the proofs, (10s. 6d. per sheet,) .....	2	2	0
Paid moiety of printer's bill for printing appendix....	5	15	6
Copy of the case for the printer .....	0	9	0
Attending him therewith and instructing him to print same.....	0	13	4
Perusing and collating the proofs, at 10s. 6d. per sheet .....	1	1	0
Paid moiety of printer's bill .....	2	9	9
Attending with the appendices and cases, and lodging same in the registry.....	0	6	8
Paid the registrar for distributing same .....	1	12	0
Paid Council Office fee on lodging the cases .....	1	1	0
Paid Council Office fee for setting down the case ....	0	10	0
Attending Dr. Haggard with case and appendix, and feeing him for the hearing .....	1	13	4
Paid his fee .....	15	15	0
His clerk .....	0	10	0
The like attendance on and fee to Dr. Harding and clerk.....	17	18	10
Attending both counsel to fix a time for a consultation	0	13	4
Paid Dr Haggard's fee thereon .....	5	5	0
His clerk .....	0	5	6
The like fees to Dr. Harding and clerk .....	5	10	6
Attending consultation prior to the hearing .....	1	6	8
Perusing summons to attend with counsel before the Judicial Committee.....	0	3	4

	£	s.	d.
Copies thereof for both counsel, and attending them therewith .....	0	6	8
Paid for summons and messengers' fee .....	0	12	6
Attending informations at the Council Office.....	2	6	8
Fee when their lordships agreed to recommend Her Majesty to pronounce against my appeal and to retain the principal cause with all its incidents, and act .....	0	10	8
Paid registrar's attendance and coach hire.....	1	14	2
Paid coach hire for self .....	0	5	0
Clerks and officers of court.....	0	10	6
Letters and messengers .....	0	8	4
Sportulage .....	0	6	8
For divers extra-judicial attendances, conferences, and correspondence during the dependence of this appeal, for which no charge has been made .....	1	1	0
Drawing this bill of costs .....	1	3	4
Copy thereof for the registrar.....	0	11	8
The like for adverse proctor .....	0	11	8
Attending the registrar and fixing time for taxation ..	0	6	8
Attending taxation .....	0	13	4
Paid registrar's fee .....	1	1	0
Attending adverse proctor, receiving the amount of my costs, and giving receipt for same .....	0	6	8
Paid for receipt stamp .....	—	—	—
	£		

*The Taxed Costs of Respondent in the Judicial Committee.*

Proctor's retaining fee .....	0	13	4
Perusing and considering copy of inhibition and citation served upon me, and writing my client .....	0	6	8
Drawing proxy .....	0	13	4
Engrossing same .....	0	6	8
Writing therewith and instructions for execution ....	0	5	0
Attending and retaining Dr. Addams .....	0	6	8
Paid his fee .....	2	2	0
Paid his clerk .....	0	5	0
<i>Michaelmas Term Fee.</i>	0	6	8

First Session.—Attending in court, when adverse proctor exhibited a proxy under the hand and seal of

**TAXED BILLS OF COSTS.**

**955**

	£	s.	d.
Paid his fee .....	5	5	0
His clerk .....	0	5	0
The like attendance and fees to Mr. Turner and clerk .....	6	3	4
Perusing the proof sheets and correcting the press of the appendix, at 10s, 6d. per sheet. ....	24	3	0
The like charge in regard to the joint case. ....	1	1	0
Paid moiety of printer's bill .....	96	2	11
Attending in the registry, lodging the cases .....	0	6	8
Paid registrar's fees for distributing same .....	1	2	0
Paid Council Office fees for same .....	1	1	0
Attending Dr. Addams with the case and appendix, and feeing him for the hearing .....	2	16	8
Paid his fee .....	52	10	0
His clerk .....	1	10	0
The like attendance on and fees paid to Mr. Turner and clerk .....	56	16	8
Perusing and considering summons from the Council Office, appointing a day for the hearing .....	0	3	4
Copies thereof for both counsel .....	0	6	8
Paid Council Office fees and summonses and messenger .....	0	12	6
Paid fees on entering appearance .....	0	10	0
A consultation being desired, attending Dr. Addams and fixing time for same .....	0	13	4
Paid his fee .....	5	5	0
His clerk .....	0	10	6
The like attendance on and fees paid to Mr. Turner and clerk .....	6	3	10
Attending informations at the Council Chamber. ....	2	6	8
Fee when their lordships, having heard informations, assigned the cause for further information, and act. .	0	10	8
Paid registrar's attendance and coach hire .....	1	14	2
Paid coach hire .....	0	5	0
Paid officer's attendance .....	0	12	6
Perusing and considering summons from the Council Office, &c., (as before.)			
Attending Dr. Addams and refreshing him for the further hearing. ....	0	16	8
Paid his fee .....	10	10	0
His clerk .....	0	10	6
The like attendance, and fee to Mr. Turner and clerk. .	11	17	2
Attending further informations at the Council Chamber .....	2	6	8
Fee when their lordships assigned the case for judgment, and act .....	0	10	8
Paid registrar's attendance and coach hire. ....	1	14	2



**958      OFFICIAL FEES, AND TAXED BILLS OF COSTS.**

	£	s.	d.
decreed accordingly against the real and personal estate of the respondent, and act.....	0	8	8
Paid filing affidavit .....	0	5	4
Drawing order of court to lead sequestration .....	0	13	4
Engrossing same .....	0	6	8
Paid fees of sequestration under seal .....	1	11	4
Extracting fee .....	0	6	8
Attending and receiving the amount of my taxed costs	0	6	8
Paid for receipt stamp .....	—	—	—
	<hr/>		
	£		
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# TAXED BILLS OF COSTS.

	£	s.
Paid registrar's attendance .....	0	3
Attending Dr. Haggard and feeing him to attend the judgment .....	0	6
Paid his fee .....	2	2
The like attendance and fee to Dr. Jenner .....	2	8
Sportulage .....	0	2
Letters, messengers, postage, &c. ....	0	1
Clerks and officers of court .....	0	

## *Hilary Term Fee.*

First Session.—Attending long judgment .....	1	
Fee when the judge pronounced against the force and validity of the pretended codicil propounded, and condemned the adverse party in costs, and acts. ....	0	
Paid interlocutory fees .....	1	
Sportulage .....	0	
Clerks and officers of court .....	0	
Letters, messengers, &c. ....	1	
Drawing bill of costs, &c., and taxing fees (as before) —	—	
Engrossing same and parchment .....	—	
Attending counsel to sign same .....	1	
Paid his fee .....		

Third Session.—Attending in court, when I porrected my bill of costs, which the judge, on the report of the registrar, taxed at the sum of £ , and paid fee, and act .....

Drawing and engrossing order of court to lead monition. ....

Drawing monition .....

Engrossing s

Paid fees of n

Extracting fe

Copy of moni

Drawing and

The like of aff

Attending the

to serve the

Paid his fee fo

Fourth Session

the monition

thereof 1

Drawing 1

upon th

Attending

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